

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 301

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA, OVER-THE-ROAD AND CITY TRANS-
FER DRIVERS, HELPERS, DOCKMEN AND WARE-
HOUSEMEN, LOCAL UNION NO. 41, A. F. L.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

INDEX

	Original	Print
Proceedings in U. S. C. A. for the Eighth Circuit.....		
Certificate of the National Labor Relations Board.....	1	1
Proceedings before National Labor Relations Board.....	3	2
Charge.....	3	2
Complaint.....	5	4
Notice of hearing.....	9	6
Notice of intention to amend complaint.....	9	7
Answer of respondent to complaint.....	10	7
Order designating trial examiner.....	11	8
Telegram from Counsel for Union requesting extension of time to file brief.....	11	9
Telegram from Chief Trial Examiner granting extension of time to file brief.....	12	9
Order transferring case to National Labor Relations Board.....	12	9
Letter dated January 23, 1951, from John J. Manning to Frank Kleiler requesting opportunity to argue orally....	13	10
Statement of exceptions of respondent to intermediate report of trial examiner.....	14	10

I

Proceedings before National Labor Relations Board—Con.	Original	Print
Decision and order of National Labor Relations Board, June 26, 1951.....	17	13
Dissenting, Abe Murdock, Member.....	23	17
Appendix A—Form of notice pursuant to a Decision and Order.....	26	20
Intermediate report and recommended order, Janu- ary 18, 1951.....	28	22
Appendix A—Form of notice posted suggested by Intermediate report.....	38	30
Petition for enforcement of an order of the National Labor Relations Board.....	39	31
Appendix A—Form of notice posted etc. (Copy) (Omitted in printing).....	43	34
Answer to petition for enforcement.....	44	34
Portions of record printed as an appendix to brief of Interna- tional Brotherhood of Teamsters, etc.....	52	35
Transcript of hearing.....	52	35
Appearances.....	52	35
Testimony of Paul Howard Byers.....	53	35
General Counsel's Exhibit No. 2—Written agree- ment between Byers Transportation Company, Inc. & International Brotherhood of Team- sters, etc.....	55	37
Testimony of James Frank Boston.....	82	54
General Counsel's Exhibit No. 3—Bylaws of International Brotherhood of Teamsters, etc..	88	59
Testimony of Floyd R. Hayes.....	129	74
Respondent's Exhibit No. 1—Excerpts from Con- stitution of the International Brotherhood of Teamsters, etc.....	134	78
Caption.....	150	89
Appearances.....	150	89
Order of submission.....	151	90
Opinion, Thomas, J.....	151	90
Decree.....	156	95
Petition of the National Labor Relations Board for rehearing..	157	96
Order denying petition for rehearing.....	160	99
Clerk's certificate.....	160	99
Order allowing certiorari.....	162	101

1 In United States Court of Appeals for the Eighth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, & HELPERS OF AMERICA, OVER-THE-ROAD AND CITY TRANSFER DRIVERS, HELPERS, DOCKMEN AND WAREHOUSEMEN, LOCAL UNION No. 41, A. F. L., RESPONDENT

Certificate of the National Labor Relations Board

Filed September 20, 1951

The National Labor Relations Board, its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board—Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L.," the same being known as Case No. 17-CB-36, before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating Stephen S. Bean Trial Examiner for the National Labor Relations Board, dated November 21, 1950.

(2) Stenographic transcript of testimony taken before Trial Examiner Bean on November 21, 1950, together with all exhibits introduced in evidence.

2 (3) Respondent's telegram, dated November 30, 1950, requesting extension of time for filing brief before the Trial Examiner.

(4) Copy of Chief Trial Examiner's telegram, dated December 1, 1950, granting all parties extension of time for filing briefs.

(5) Copy of Trial Examiner Bean's Intermediate Report, dated January 18, 1951 (annexed to Item 8 hereof); order transferring case to the Board, dated January 18, 1951, together with affidavit of service and United States Post Office return receipts thereof.

(6) Respondent's letter, dated January 23, 1951, requesting permission to argue orally before the Board. (Denied, see Board's Decision and Order dated June 26, 1951.)

(7) Respondent's exceptions to the Intermediate Report, received February 6, 1951.

(8) Copy of Decision and Order issued by the National Labor Relations Board on June 26, 1951, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 14th day of September 1951.

[SEAL]

FRANK M. KLEILER,
Executive Secretary,
National Labor Relations Board.

[File endorsement omitted.]

3 Before National Labor Relations Board

Charge against Labor organization or its agents

Filed August 7, 1950

Form NLRB-508 (12-48)

Budget Bureau No. 64-R003.1

Approval expires November 30, 1949.

Important—Read carefully.

Where a charge is filed by a Labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Do not write in
this space

Case No. 17-CB-36

Date filed 8/7/50

Compliance status
checked by: L. H. M.

Instructions: File an original and 4 copies of this charge with the N. L. R. B. Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Labor Organization or Its Agents Against Which charge is brought.

Name: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over the Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L.

Address: 116 West Linwood, Kansas City, Missouri.

The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of Section (8b), Subsection(s) (1) and (2) of the National Labor Relations Act, and these (List subsections) unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the charge (be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets)

4 On or about July 1, 1950, the above-named labor organization by its officers, agents and employees caused the Employer named below to terminate the undersigned's seniority and thereby caused the said undersigned to lose wages, for some reasons other than the undersigned's failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

By the acts set forth in the above paragraph, the labor organization by its officers, agents and employees interfered with, restrained, and coerced the employees in the rights guaranteed by Section 7 of the Act.

3. Name of Employer: Byers Transportation Company.

4. Location of plant involved (Street, City, and State) 901 Washington Street, Kansas City, Missouri.

5. Nature of employer's business: Transportation.

6. Number of Workers Employed: 54.

7. Full name of party filing charge: Frank Boston.

8. Address of party filing charge (Street, City, and State), 820 Tauromee, Kansas City, Kansas.

Telephone number: No telephone.

9. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By FRANK BOSTON,

(Signature of representative or person making charge.)

(Title or office, if any.)

AUGUST 7, 1950 (Date).

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80).

WS/mw 8-7-50

AFFIDAVIT OF SERVICE (omitted in printing)

Before The National Labor Relations Board Seventeenth Region
[Title omitted.]

Complaint

September 8, 1950

It having been charged by Frank Boston, an Individual, hereinafter called the Charging Party, that International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L., hereinafter called the Respondent, is engaged in, and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the Regional Director for the Seventeenth Region, hereby issues this Complaint against Respondent, and alleges the following:

1. The Charging Party is now, and at all times material hereto has been an employee of the Byers Transportation Company, Inc., 901 Washington Street, Kansas City, Missouri, hereinafter referred to as the Employer.

2. The Employer is a Missouri corporation. It is engaged as a common carrier in the motor transportation of commodities between St. Louis, Missouri, and Kansas City, Missouri, and between St. Joseph, Missouri, and Kansas City, Missouri. It operates subsidiary lines from St. Joseph, Missouri, to Leavenworth, Kansas, and Atchison, Kansas. It also occasionally makes full trailer deliveries from points on its regular runs to Wichita, Kansas. It has extensive interline agreements by which commodities are shipped to points beyond its own routes by other common carriers. A substantial portion of the commodities handled by the Employer terminate or originate outside of the State of Missouri. Its operations are subject to regulation by the Interstate Commerce Commission. Its annual gross revenue is in excess of \$1,000,000.

3. The Respondent is now and at all times material hereto has been a labor organization within the meaning of Section 2 (5) of the Act.

4. The Respondent is now and at all times material hereto has been the bargaining representative for the employees of the Employer.

5. The Charging Party is now and at all times material hereto has been a member of the Respondent.

6. At all times material hereto there has been an agreement between the Respondent and Employer and others, commonly known as the "Central States Area Over-the-Road Motor Freight Agreement." This agreement now, and at all times material hereto has constituted the collective bargaining agreement between the Respondent and Employer.

Said agreement, at all times material hereto, contained the following provision:

ARTICLE V

SECTION 1. Seniority rights for employees shall prevail. Seniority shall be broken only by discharge, voluntary quit, or more than a two-year lay-off. In the event of a lay-off, an employee so laid off shall be given two weeks' notice of recall mailed to his last known address. In the event the employee fails to make himself available for work at the end of said two weeks, he shall lose all seniority rights under this Agreement. A list of employees arranged in the order of their seniority shall be posted in a conspicuous place at their place of employment. Any controversy over the seniority standing of any employee on this list shall be referred to the Union for settlement.

7. No election, as provided in Section 8 (a) (3) and Section 9 (e) (1) of the Act, has been held for the unit to which the Charging Party belongs.

8. Section 45 of the Bylaws of the Respondent provides:

Any member, under contract, one month in arrears for dues shall forfeit all seniority rights.

(a) Clarification of the above paragraph: On the second day of the second month a member becomes in arrears with his dues.

Section 44 of the Bylaws provides:

All members who are three (3) months in arrears for dues shall stand suspended and deprived of all rights, privileges and membership, but can be reinstated upon payment of amount of dues.

9. The Charging Party neglected to pay his union dues, for the month of June 1950, to the Respondent, as provided by Section 45 (a) of its Bylaws, set forth above in paragraph 8.

On July 5, 1950, the Charging Party paid both his July 1950 and August 1950 dues to the Respondent. On or about 8 July 15, 1950, because of the Charging Party's failure to pay his June 1950 dues, as provided in Section 45 (a) of the Bylaws, as set forth above in paragraph 8, the Respondent caused the said Charging Party's seniority to be reduced by the Employer from the 18th to the 54th position on the seniority list; that as the result of the Charging Party's loss in seniority he has suffered and continues to suffer financial losses; that the said

Charging Party because of his loss of seniority, as aforesaid, is likely to lose his position with the Respondent.

10. Respondent, by the acts set forth in paragraphs 6, 7, 8 and 9, did attempt to cause and did cause the Employer to discriminate against the Charging Party, and did thereby engage in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

11. Respondent, by its acts set forth in paragraphs 6, 7, 8 and 9, did restrain and coerce employees in the exercise of the rights guaranteed in Section 7 of the Act, and Respondent did thereby engage in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

12. The acts of the Respondent, set forth in paragraphs 6, 7, 8 and 9, occurring in connection with the operations of the Employer, set forth in paragraph 2, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

13. The acts of Respondent, set forth in paragraphs 6, 7, 8 and 9, constitute unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A) and (2), and Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Seventeenth Region, on this 8th day of September 1950 issues this Complaint against the Respondent herein.

[SEAL]

HUGH E. SPERRY,
*Regional Director, National Labor
Relations Board, Seventeenth Region.*

9

Before National Labor Relations Board

Notice of hearing

Please Take Notice that on the 21st day of November 1950 at 10 a. m., at Room 301, Fidelity Building, 911 Walnut Street, Kansas City, Missouri, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that, pursuant to section 203.20 of the Board's Rules and Regulations, you shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within

ten (10) days from the service thereof and that unless you do so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

In Witness Whereof the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Complaint and Notice of Hearing to be signed by the Regional Director for the Seventeenth Region on this 8th day of September 1950.

[SEAL]

HUGH E. SPERRY,

*Regional Director, National Labor Relations Board,
Seventeenth Region, 1411 Fidelity Bldg., 911 Walnut
St., Kansas City 6, Missouri (Address).*

Before National Labor Relations Board

Notice of intention to amend complaint

September 26, 1950

You Are Hereby Notified of intention to amend the Complaint filed herein by striking the words "July 1950 and August 1950" in line 5 of paragraph 9 on page 4 thereof and substituting therefor "June 1950 and July 1950."

In Witness Whereof, the undersigned Regional Director for the Seventeenth Region of the National Labor Relations Board, on behalf of the Board, has caused this Notice of Intention to Amend Complaint to be issued on this 26th day of September 1950.

[SEAL]

HUGH E. SPERRY,

*Regional Director, National Labor
Relations Board, Seventeenth Region.*

Before National Labor Relations Board

Answer of Respondent

Comes now Respondent and for answer to the complaint herein :

1. Admits the allegation contained in paragraph 1 of said complaint.

2. Neither denies nor affirms the allegations in paragraph 2 of said complaint for the reason that it does not have sufficient knowledge thereof.

3. Admits the allegations contained in paragraphs 3 and 4 of said complaint.

4. Denies the allegations set forth in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, and 13.

Respondent Union further states that the complaint issued herein does not state facts sufficient to give the National Labor Rela-

tions Board jurisdiction of Respondent Union or of the subject matter of this proceeding.

For further answer, Respondent Union states that the right of a labor organization such as Respondent Union to prescribe its own rules with respect to the acquisition or retention of membership therein is protected by a proviso contained in subsection (1) (A) of Section 8 (b) of the National Labor Relations Act, as amended, and that by reason of such proviso the National Labor Relations Board is without jurisdiction to issue and process the complaint herein.

For further answer, Respondent Union states that the rights guaranteed employees by Section 7 of the National Labor Relations Act, as amended, do not include protection of a member of a labor organization from bylaws duly passed by the membership
11 of such labor organization and that therefore the National Labor Relations Board is without jurisdiction to issue and process the complaint in this matter.

For further answer Respondent Union alleges that he acts, conduct and statements complained of in the said complaint were lawful and protected by Section 8 (c) of the National Labor Relations Act which protection the Respondent Union now invokes.

Having fully answered Respondent Union prays for a finding and order dismissing the complaint for all the reasons herein stated.

CLIF. LANGSDALE,
JOHN J. MANNING,

Attorneys for Respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L.

Before National Labor Relations Board

Order designating Trial Examiner

November 21, 1950

It Is Hereby Ordered that Stephen S. Bean act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 5, of the National Labor Relations Board.

Dated, Washington, D. C., November 21, 1950.

[SEAL]

WILLIAM R. RINGER,
Chief Trial Examiner.

Before National Labor Relations Board

Telegram from Counsel for Union requesting extension of time to file Brief

WESTERN UNION TELEGRAM

1950 Nov 30 PM 5 20

WZ349 PD=FI Kansas City Mo 30 338P=

12 William Ringer, Chief Trial Examiner, National Labor Relations Board=Federal Security Bldg South 4th And Independence Ave Southwest=

Re Teamsters Local 41 And Frank Boston Case No. 17-CB-36. Transcript Not Yet Received. Request Extension Time File Brief To December 20, 1950=

John J Mannin, Attorney For Union 922 Scarritt Bldg=41 17-CB-36 20 1950=

Before National Labor Relations Board

Telegram from Chief Trial Examiner granting extension of time for Counsel for Union to file brief

TELEGRAM

DECEMBER 1, 1950

JOHN J. MANNING,

922 Scarritt Bldg., Kansas City, Mo.

WILLIAM J. SCOTT,

National Labor Relations Board,
1411 Fidelity Bldg., Kansas City, Mo.

Re International Brotherhood of Teamsters, Case No. 17-CB-36: At the request of Counsel for Respondent Union for extension of time to file briefs, time is hereby extended to December 18, 1950.

WILLIAM R. RINGER,
Chief Trial Examiner.

Before National Labor Relations Board

Order transferring case to the National Labor Relations Board

January 18, 1951

[Title omitted.]

13 A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report and Recommended Order of the said Trial Ex-

aminer, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.

It Is Hereby Ordered, pursuant to Section 102.45 of National Labor Relations Board Rules and Regulations, Series 5, that the above-entitled matter be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., January 18, 1951.

By direction of the Board:

FRANK M. KLEILER,
Executive Secretary.

NOTE.—Communications concerning compliance with the Intermediate Report should be with the Director of the Regional Office issuing the complaint.

Attention is specifically directed to the excerpts from the Rules and Regulations appearing on the page attached hereto.

Before National Labor Relations Board

Letter from Counsel for Union requesting opportunity to argue orally

Clif. Langsdale, Lawyer, 921-24 Scarritt Bldg., Telephone, Victor 9880.

KANSAS CITY, MISSOURI, *January 23, 1951.*

Mr. FRANK KLEILER,

*Executive Secretary, National Labor Relations Board,
Federal Security Building South, 4th and Independence
Avenue SW., Washington 25, D. C.*

Re: International Brotherhood of Teamsters Local Union No. 41,
A. F. L. Case No. 17-CB-36

DEAR Mr. KLEILER: Respondent Union requests an opportunity to orally argue the above matter before the Board.

Very truly yours,

JOHN J. MANNING.

JJM: aw.

14

Before National Labor Relations Board

*Statement of exceptions of Respondent to Intermediate
Report of Trial Examiner*

Comes now Respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L., and excepts to the Intermediate Report of Trial Examiner Stephen S. Bean, dated January 18, 1951, as follows:

1. The finding of the Trial Examiner that:

"Clearly the Employer discriminated against Boston when it reduced his seniority."

as stated on page 4 of the Intermediate Report.

2. The finding of the Trial Examiner that:

"The Respondent arrogated to itself the Employer's control over employment, and to use such control to accomplish a clearly discriminatory reduction of Boston's seniority. I find that by its conduct Respondent caused the Employer to discriminate against the Charging Party in violation of Section 8(a) (3) which proscribes unequal treatment of employees in regard to any condition of employment to encourage or discourage membership in any labor organization."

as stated on page 4 of the Intermediate Report.

3. The finding of the Trial Examiner that:

"Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b) (2) of the Act."

as stated on page 4 of the intermediate Report.

4. The finding of the Trial Examiner that:

"Respondent has restrained and coerced and is restraining and coercing employees in violation of Section 8(b) (1) (A) thereof (the Act)."

as stated on page 4 of the intermediate Report.

5. The conclusions of law of the Trial Examiner that:

15 "2. By causing, and attempting to cause, the Employer to discriminate against employees in violation of Section 8 (a) (3) of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

"3. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

"4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act."

6. The recommended order of the Trial Examiner that:

"1. Cease and desist from:

"(a) Causing, or attempting to cause, Byers Transportation Company, Inc., its agents, successors, or assigns to reduce the seniority of, or otherwise discriminate against employees in violation of Section 8 (a) (3) of the Act; and

"(b) In any other manner restraining or coercing employees of Byers Transportation Company, Inc. its successors or assigns, in the exercise of the rights to engage in, or to refrain from engaging in, any or all of the concerted activities guaranteed in Section 7 of the Act.

"2. Take the following affirmative action which I find will effectuate the policies of the Act:

"(a) Immediately notify, in writing, Frank Boston at his last known place of residence, and Byers Transportation Company, Inc., that it withdraws its request that Frank Boston's seniority be reduced from the position in which it stood on or about July 15, 1950, and that it requests said Employer to offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to seniority or other rights and privileges;

"(b) Make whole said Frank Boston for any losses of pay and other incidents of the employment relationship which he may have suffered because of the discrimination against him in the manner described in "The remedy";

16 "(c) Post in conspicuous places in its business offices, and wherever else notices to its members are customarily posted, copies of the notices attached hereto as Appendix A. Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material:

"(d) Mail to said Regional Director signed copies of the notice attached hereto as Appendix A, for posting, the Employer willing, at the office and place of business of the Employer in Kansas City, Missouri, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by said Regional Director, shall, after being duly signed by the Respondent, be forthwith returned to the Regional Director for such posting; and

"(e) File with said Regional Director within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, a report in writing, setting forth in detail the steps which the Respondent has taken to comply herewith."

7. The failure of the Trial Examiner to find that:

(a) The Charging Party had not exhausted his rights under the Respondent Union's Constitution, as that Constitution provides they should do and which Constitution operates as a contract between Respondent Union and its members.

(b) The rights guaranteed to employees under Section 7 of the Act do not include protection from Bylaws of a Local Union imposed by a majority vote of the membership of such union upon its own members in that such Bylaws are part of the contract between labor organizations and their members and which Bylaws the charging party has by contract agreed to abide by.

(c) The right of a labor organization such as Respondent Union to prescribe its own rules with respect to the acquisition or retention of membership is protected by a proviso contained in Subsection (1) (A) of Section 8 (b) of the National Labor Relations Act, as amended, and that by reason of such proviso the National Labor Relations Board is without jurisdiction to issue and process the complaint herein.

8. The failure of the Trial Examiner, upon the motion of the Respondent Union, to dismiss the complaint for the reasons contained in said motion.

Respectfully submitted.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS
OF AMERICA, OVER-THE-ROAD AND CITY
TRANSFER DRIVERS, HELPERS, DOCKMEN AND
WAREHOUSEMEN, LOCAL UNION No. 41,
A. F. L.,

CLIF. LANGSDALE,
JOHN J. MANNING,

*Attorneys for Respondent Union, 922 Scarritt Building,
Kansas City 6, Missouri.*

Before The National Labor Relations Board

Decision and Order of National Labor Relations Board

June 26, 1951

On January 18, 1951, Trial Examiner Stephen S. Bean issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (b) (1) (A) and 8 (b) (2) of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Respondent's request for oral argument is hereby denied, as the record, the exceptions, and the Respondent's brief, in our opinion, adequately present the issues and the positions of the parties.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the

entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

We agree with the Trial Examiner that the Employer, by reducing Boston's seniority for being delinquent in the payment of his union dues, discriminated against Boston and that such discrimination would constitute a violation of Section 8 (a) (3) of the Act where, as in this case, the Respondent had not obtained a union-shop contract or a certification pursuant to Section 9 (e) of the Act.

We have recently considered a similar loss of seniority by an employee pursuant to a contractual seniority clause identical to the one here involved and we held that, unless protected, as it was there, by a valid union security agreement, such loss of seniority constituted discrimination within the meaning of Section 8 (a) (3).¹ Our dissenting colleague joined in this decision, but apparently regards it inapplicable here because the instant contract does not contain an operative union security clause. He argues that only members are subject to the Union's bylaws with respect to the payment of dues, that there is no evidence that the Union ever sought to compel nonmembers to pay dues, and that consequently Boston could have escaped reduction in seniority for failure to pay dues by resigning from the Union.

19 The vice in such argument is that it overlooks the fact that absent a valid contractual union-security provision, Boston had the absolute protected right under the Act to determine how he would handle his union affairs without risking any impairment of his employment rights and that the Union had no right at any time whether Boston was a member or not a member to make his employment status to any degree conditional upon the payment of dues without first obtaining proper authorization under Section 9 (e) of the Act. Thus, in *Sub Grade Engineering*, 93 N. L. R. B. No. 45, the Board held that where there was no security agreement in effect, a union's insistence upon the application of its trade rule requiring certain of its members to be given preference over other members during a layoff was permitting the union "to arrogate to itself the company's control of employment and to use such control to accomplish discharges which were clearly discriminatory."² In the *American Pipe Steel Corporation* case³ the Board pointed out that an employer may not lend his assistance to a union in compelling adherence to the latter's rules. For, in so doing an employer would be strengthening the position of such union contrary to the well-established principle that an employer's acceptance of the

¹ *Firestone Tire & Rubber Company*, 93 N. L. R. B. No. 161. The contract in this case contained a valid union security clause which the Board found to have protected the otherwise unlawful discrimination.

² See also *American Pipe and Steel Corporation*, 93 N. L. R. B. No. 11; *Air Products Inc.*, 91 N. L. R. B. No. 212; *Firestone Tire and Rubber Company*, supra.

³ See footnote 2, supra.

determination of a labor organization as to who shall be permitted to work for it is violative of Section 8 (a) (3) where no lawful contractual obligation for such action exists.

Moreover, to assume that Boston's seniority status would have remained unaffected had he resigned from the Union is to overlook the plain fact that the seniority clause in the contract applies to members and nonmembers alike, and is sufficiently broad to permit the Union to decide his seniority status regardless of his nonmembership in the Union. We are unwilling to make the naive assumption that it would not have reduced his seniority if he had resigned.⁴

20 We also agree that, in the circumstances of this case, the Respondent by engaging in the conduct described in the Intermediate Report, violated Section 8 (b) (1) (A) as well as Section 8 (b) (2) of the Act.⁵ The fact that the Employer may not actively have opposed Boston's reduction in seniority does not, in our view, exculpate the Respondent Union.⁶

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall, substantially in accordance with the Trial Examiner's recommendation, order the Respondent to cease and desist from its unlawful conduct and to take affirmative action necessary to effectuate the policies of the Act.

We shall further order the Respondent to make whole Frank Boston for any loss of pay he may have suffered as a result of the discrimination against him, in the manner provided for in the Intermediate Report.

We shall also order the Respondent to deduct from the amount due to Frank Boston such sums as would normally have been deducted from his wages by the Employer for deposit with State and Federal agencies on account of social security and other similar benefits and to pay to the appropriate State and Federal agencies, to the credit of Frank Boston and the Employer, a sum of money equal to the amount which, absent the discrimination, would have been deposited to his credit by the Employer, either as a tax upon the Employer or on account of deductions made from Boston's

⁴ Apparently to offset any contemplated resignations before the closed shop provision of the contract could be validly invoked after a 9 (e) election, the Employer contractually agreed "to recommend to all employees that they become members of the Union and maintain such membership during the life of this Agreement, to refer new employees to the union representative, and to recommend to delinquent members that they pay their dues since they are receiving the benefits of this contract" (Art. II, 4th par.).

⁵ Member Reynolds desires to note that he concurs in the Trial Examiner's failure to find, as alleged in the complaint, that the inclusion of the seniority clause in the contract was per se illegal only because no exceptions were filed to the Trial Examiner's failure to make such a finding. (See footnote 7 of the Firestone case, supra.)

⁶ See Sub Grade Engineering Company; American Pipe and Steel Corporation, supra.

wages by the Employer, on account of social security or other similar benefits.⁷

21 The Respondent shall not be liable for any back pay accruing subsequent to 5 days after the date on which the Respondent notifies the Employer and Boston, in accordance with our Order, that it withdraws its request that Frank Boston's seniority be reduced from the position in which it stood on or about July 15, 1950, and that it requests said Employer to offer him full and immediate reinstatement to his former or substantially equivalent position, without prejudice to seniority or other rights and privileges.⁸

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L., its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Byers Transportation Company, Inc., its officers, agents, successors, and assigns to reduce the seniority of, or otherwise discriminate against, any of its employees because they are delinquent in their payment of dues to International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L., except in accordance with Section 8 (a) (3) of the Act;

(b) In any other manner causing or attempting to cause said Employer, its officers, agents, successors, and assigns, to discriminate against any of its employees in violation of Section 8 (a) (3) of the Act;

(c) Restraining or coercing employees of Byers Transportation Company, Inc., in the exercise of the rights guaranteed them in Section 7 of the Act.

22 2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Immediately notify, in writing, Frank Boston at his last known place of residence, and Byers Transportation Company, Inc., that it withdraws its request that Frank Boston's seniority be reduced from the position in which it stood on or about July 15, 1950, and that it requests said Employer to offer him imme-

⁷ Pen and Pencil Workers Union, Local 19593, A. F. L. (Wilhelmina Becker), 91 N. L. R. B. No. 155.

⁸ Pinkerton's National Detective Agency, Inc., 90 N. L. R. B. No. 39.

diate and full reinstatement to his former or substantially equivalent position, without prejudice to seniority or other rights and privileges;

(b) Make whole said Frank Boston for any losses of pay and other incidents of the employment relationship which he may have suffered because of the discrimination against him in the manner described in that section of the Board's decision entitled "The Remedy";

(c) Post in conspicuous places in its business offices, and wherever else notices to its members are customarily posted, copies of the notice attached hereto as Appendix A.⁹ Copies of said notice, to be furnished by the Regional Director for the Seventeenth Region shall, after being duly signed by an official representative of the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Mail to the Regional Director for the Seventeenth Region signed copies of the notice attached hereto as Appendix A for posting, the Employer willing, at the office and place of business of the Employer in Kansas City, Missouri, in places where notices to employees are customarily posted. Copies of said notice to be furnished by said Regional Director, shall, after being signed as provided in paragraph 2 (c) of this Order, be forthwith returned to the Regional Director for such posting; and

23 (e) Notify the Regional Director for the Seventeenth Region, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith.

Signed at Washington, D. C., June 26, 1951.

[SEAL]

PAUL M. HERZOG,
Chairman,
JOHN M. HOUSTON,
Member,
JAMES J. REYNOLDS, JR.,
Member,
National Labor Relations Board.

Abe Murdock, Member, dissenting:

I cannot agree with my colleagues that the Respondent Union in this case has violated either Section 8 (b) (1) (A) or Section 8 (b) (2) of the Act.

In its decision the majority has stated that "* * * the Employer, by reducing Boston's seniority for being delinquent in the

⁹In the event this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted in the notice before the words, "A Decision And Order," the words, "A Decree Of The United States Court Of Appeals Enforcing."

payment of his Union dues, discriminated against Boston and that such discrimination would constitute a violation of Section 8 (a) (3) of the Act * * *” In my opinion, this conclusion is not warranted by the facts of this case. The Employer, following its customary procedure under the terms of its collective bargaining agreement with the Respondent, submitted the seniority list to the Respondent Union for settlement of any controversy over seniority standing. The Respondent Union, finding that one of its members had been delinquent, applied, in a nondiscriminatory manner, the provision of its bylaws by which its membership had agreed to forfeit seniority for failure to pay dues promptly. The Employer, bound by its agreement with the representative of its employees, the Respondent, acquiesced in this application of the Respondent’s rules to one of its members, and posted a seniority list reflecting Boston’s reduction in seniority.

On these facts I fail to perceive any restraint, coercion or discrimination within the meaning of the sections of the Act which the majority finds have been violated. In what respect was Boston or any other employee of the Employer restrained, coerced,

or discriminated against? The theory of the majority per-
24 force must be that the Employer’s action to effectuate the

Union’s bylaw constitutes discrimination violative of Section 8 (a) (3) because calculated to “encourage” membership in and adherence to the rules of the Union. Common sense, however, tells us that the employer’s action would not encourage membership in the Union.¹⁰ As there is no union-security clause compelling membership in the Union, it would be quite apparent to Boston that if he resigned from the Union he could suffer no detriment in his employment but on the contrary would be better off because he would no longer be subject to the Union’s bylaws and subject to reduction in seniority if he fell behind in his dues payments. Contrary to the statement in the majority opinion, I do not overlook the fact that the seniority clause in the contract applies not only to union members but to all employees. But the majority’s conclusion from that fact that Boston could have escaped the reduction in seniority he suffered because of his delinquency by resigning from the union is a non sequitur. The theory apparently is that the seniority clause is somehow discriminatory and would permit the union to apply its bylaw and ask a reduction in seniority for nonmember employees who did not pay dues. But it is clear that the Union’s bylaw is applicable only to members and there is not even a suggestion in the case that the Union has sought to compel nonmembers to pay union dues or to penalize them for not paying. Moreover, the Board’s de-

¹⁰ Cf. *American Pipe and Steel Corporation*, 93 N. L. R. B. No. 11.

cision in Firestone Tire and Rubber Company¹¹ precludes finding a seniority clause such as this which is nondiscriminatory on its face, to be illegal even though the union is given the authority to settle controversies over seniority. The Board pointed out that "The seniority provision, although permitting the Union to control seniority to some extent, does not on its face provide that the Union should do so because of union affiliation." The Board there specifically refused to proceed on the assumption that a union would utilize a seniority clause which did not on its face provide for discrimination. It was precisely for that reason that the Board refused to find such a seniority clause illegal in the Firestone case. Even though the majority now inconsistently

25 argue that it is "naive" to assume that a union will act lawfully rather than unlawfully applying such a seniority clause, I nevertheless continue to stand by that proposition.

I disagree with the majority's suggestion that another part of the Firestone decision, the Sub Grade Engineering decision, or the American Pipe and Steel decision, are dispositive of the instant case. Apart from the holding that such a seniority clause is not illegal per se, the only other holding in the Firestone case was that a similar loss of seniority under such a clause did not constitute discrimination in the context of a valid union-security agreement.¹² The Sub Grade Engineering case is not dispositive because there the element of encouragement of membership in a union which is lacking here was present. The termination of two employees in that case because they were not members of Local 101 was discrimination which clearly encouraged membership in Local 101. I recognize, of course, that in American Pipe and Steel Corporation, in which I partially dissented, the majority held that discrimination to encourage membership in a union can take place in the case of one already a member of the union, and I am bound by that decision. However, I do not regard that case as controlling on these facts. There, because the employer was willing to condition hire on referral from the union (which referred only on a rotation basis), the employee member who was terminated because he had not been referred by the Union in the regular manner, could be said to have been encouraged by the employer to maintain membership in and adhere to the rules of the Union as the only means of getting employment. But in the instant case, as pointed out, Boston could retain his employment and suffer no detriment even if he severed his membership in the Union.

¹¹ 93 N. L. R. B. No. 161.

¹² Although I find that there was dicta in the decision that the reduction in seniority would have constituted discrimination if there had been no valid union-security clause, this was not necessary to the disposition of the case, and I dissociate myself from that dicta.

Accordingly, because I do not believe it can be found that the reduction of Boston's seniority encouraged membership in the Union, I find no basis for a conclusion that the Respondent Union in violation of Section 8 (b) (2) caused the employer to discriminate against Boston "to encourage" membership in the Union.

26 I likewise do not believe it can be found that the Respondent Union restrained or coerced Boston in violation of Section 8 (b) (1) (A) by applying its rules to reduce his seniority. As has been pointed out, Boston was entirely free to withdraw from membership in the Union without suffering any detriment in his employment. He chose, however, to remain in the Union, subject to the Union's rules. The Respondent required only that, as a member of the Union, Boston or any other member be subject to the organization's governing bylaws; one of these was his forfeiture of seniority rights upon failure to pay his dues within a specified time. To hold that this conduct constituted a violation of Section 8 (b) (1) (A) is, in my opinion, to overlook the significance of the fact that Boston freely elected to be a member of the Union and bound by its rules. It seems to me that to find a violation of the Act in the circumstances of this case is to engage in an unwarranted invasion of the internal affairs of a labor organization—an invasion which I do not believe is sanctioned, much less required, by the Act. The bylaws of the Union, adopted by a majority of the membership, govern the conduct and union relationship of all the members of the organization. Dissidents have it within their power to change the operating rules of the organization; but in my opinion such power should be derived from the dissenters' ability to persuade a majority of their fellow members to the validity of their opposing viewpoint and thus to amend the regulations controlling the functioning of the organization. Such change should not be achieved in the manner approved by the majority in the present case.

For the foregoing reasons, I would find that the Respondent has not violated Sections 8 (b) (1) (A) and 8 (b) (2) of the Act and would accordingly dismiss the complaint in this case.

Signed at Washington, D. C., June 26, 1951.

ABE MURDOCK,
Member.

Appendix A

NOTICE

To All Members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L.,

27

*and to All Employees of Byers Transportation Company, Inc.,
Kansas City, Missouri.*

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not cause or attempt to cause Byers Transportation Company, Inc., its officers, agents, successors, or assigns, to reduce the seniority of, or otherwise discriminate against, any of its employees, because they are delinquent in the payment of dues to International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L., except in accordance with Section 8 (a) (3) of the Act.

We Will Not restrain or coerce employees of Byers Transportation Company, Inc., its successors or assigns, in the exercise of their right to engage in, or to refrain from engaging in, any or all concerted activities guaranteed in Section 7 of the National Labor Relations Act.

We Will immediately notify Frank Boston, and Byers Transportation Company, Inc., that we have no objection to the immediate reinstatement of Frank Boston to his former or to a substantially equivalent position and standing on the seniority list of and as an employee of Byers Transportation Company, Inc.

We Will make whole Frank Boston for any loss of pay and other incidents of the employment relationship suffered because of the discrimination against him.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS
OF AMERICA, OVER-THE-ROAD AND CITY
TRANSFER DRIVERS, HELPERS, DOCKMEN AND
WAREHOUSEMEN, LOCAL UNION NO. 41,
A. F. L.

(Labor Organization.)

By _____,

(Representative) (Title).

Dated _____

28

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Before National Labor Relations Board

DIVISION OF TRIAL EXAMINERS

WASHINGTON, D. C.

[Title omitted.]

William J. Scott, Esq., for the General Counsel.

John J. Manning, Esq., of Kansas City, Mo., for the Respondent.

Frank Boston, pro se, for the Charging Party.

Intermediate report and recommended order

January 18, 1951

Upon a charge filed August 7, 1950, by Frank Boston, hereinafter referred to as Boston, or the Charging Party, the General Counsel of the National Labor Relations Board, hereinafter called the General Counsel and the Board, respectively, by the Regional Director for the Seventeenth Region (Kansas City, Missouri), issued a complaint dated September 8, 1950, against International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L., hereinafter referred to as the Union or the Respondent. The

29 complaint alleged that Respondent had engaged in and was then engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A) and Section 8 (b) (2) of the National Labor Relations Act, 61 Stat. 136, as amended, herein called the Act. Copies of the complaint, the charge, and notice of hearing were duly served on Respondent.

With respect to the unfair labor practices, the complaint alleged in substance, that by certain acts, no election, as provided in Section 8 (a) (3) and Section 9 (e) (1) of the Act, having been held for the unit to which the Charging Party belongs, Respondent Union caused or attempted to cause the Charging Party's Employer to reduce the Charging Party's seniority because he failed to pay dues on time in accordance with the Union's bylaws, thus attempting to cause and causing the Employer to discriminate against the Charging Party, and thereby restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and consequently engaging in unfair labor practices in violation of the sections of the Act set forth in the paragraph above.

Respondent generally denied the allegations of the complaint, pleaded in substance that the complaint did not state facts sufficient to give the Board jurisdiction of Respondent or the subject matter of the proceeding, that by virtue of the Respondent's right

to prescribe its own rules with respect to the acquisition or retention of its membership and since a member of a labor organization is not protected from bylaws passed by the membership, the Board is without jurisdiction and that the conduct and statements complained of were lawful and protected by Section 8 (c) of the Act.

Pursuant to notice, a hearing was held on November 21, 1950, at Kansas City, Missouri, before Stephen S. Bean, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the

opening of the hearing the General Counsel moved to
30 amend paragraph IX of the complaint by substituting
"June" for "August." This motion was allowed. Respondent moved to dismiss the complaint on the ground of an asserted variance between the charge and the complaint. This motion was denied. At the conclusion of the General Counsel's case and again at the conclusion of the entire case, Respondent moved to dismiss the complaint on the grounds that the Charging Party desires to withdraw the charge, a desire denied him by the Regional Director and that the complaint assuming the truth of all its allegations, fails to show facts constituting unfair labor practices within the purview of Section 8 (1) (A) and 8 (b) (2) of the Act. I took both motions under advisement and hereby deny them. At the close of the hearing General Counsel and Respondent argued the case. Respondent filed a brief which has been considered.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

Findings of fact

1. THE BUSINESS OF THE EMPLOYER

Byers Transportation Company, Inc., hereinafter called the Employer, is a Missouri corporation. It is engaged as a common carrier in motor transportation of commodities between St. Louis, Missouri, and Kansas City, Missouri, and between St. Joseph, Missouri, and Kansas City, Missouri. It operates subsidiary lines from St. Joseph, Missouri, to Leavenworth, Kansas, and Atchison, Kansas. It also occasionally makes full trailer deliveries from points on its regular runs to Wichita, Kansas. It has extensive interline agreements by which commodities are shipped beyond its own routes by other common carriers. A substantial

portion of the commodities handled by the Employer terminate or originate outside the State of Missouri. Its operations are subject to regulation by the Interstate Commerce Commission. Its annual gross revenue is in excess of \$1,000,000.

I find that the Employer is engaged in commerce, and that, under applicable decisions of the Board, jurisdiction should be asserted in this proceedings.

II. THE CHARGING PARTY AND THE ORGANIZATION INVOLVED

31 It is admitted and I find that the Charging Party is an employee of the Employer and a member of Respondent, and that Respondent is a labor organization admitting to membership employees of the Employer and is the bargaining representative for employees of the Employer.

III. THE UNFAIR LABOR PRACTICES

Facts

The Employer and Respondent had entered into an agreement in force at the time all events with which this case is concerned, occurred. This agreement provides, inter alia, that seniority shall prevail and be broken only by discharge, voluntary quit, or more than a 2-year lay-off, in which latter event a 2-week notice of recall shall be given, subsequent to the expiration of which time an employee not making himself available for work shall lose all seniority rights; it further provides that a list of employees in order of seniority shall be posted at their place of employment and that controversies over seniority standing, of any employee on the list shall be referred to the Union for settlement.

No union-shop contract existed between the Employer and Respondent.

The Charging Party failed to pay his June 1950 union dues to Respondent until July 5, 1950. One of Respondent's bylaws provides that any member failing to pay dues by the second day of the second month for which payable becomes in arrears, and shall forfeit all seniority rights. Respondent, the General Counsel, and the Charging Party, all construed this bylaw to mean that the failure of the Charging Party to pay his June dues on or before July 2, caused the Charging Party to lose his seniority rights. Thereafter on or about July 15, 1950, Respondent requested the Employer to reduce the Charging Party's seniority, by posting a new list supplied by Respondent. The Employer complied with Respondent's request with the result that the Charging Party's seniority was reduced from the 18th to the 54th position.

As a consequence of this conduct, the Charging Party has lost assignments for two trips for which he otherwise would have potentially received pay in the amount of \$28.05 for each trip.

32

Discussion and conclusions

Here we have a case where a union has caused a nonunion shop employer to penalize one of a union's own members for his failure to comply with union bylaws.

Respondent asserts its conduct is not violative of the Act for the reasons contained in its motion to dismiss.

The contention that the complaint should be dismissed because the Charging Party does not desire to have it prosecuted is without merit. *Wine, etc. Workers Union et al.*, 78 N. L. R. B. 504.

It is fundamental that once a charge is filed the General Counsel proceeds not in vindication of private rights but as an agency charged by Congress with the function of enforcing the Act and bringing about compliance with its provisions.

The contention that the complaint should be dismissed because of the limiting proviso to Section 8 (b) (1) (A) that the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein, is also without merit. We are not dealing in this case with the acquisition or retention or membership. Boston had acquired membership before, and continued to retain membership after, his seniority was reduced.

The proviso is ambiguous. It concerns only the internal regulations of labor organizations. It has no reference to conduct of the character involved in this case, where the Union enforced its rules with respect to the timely payment of dues by causing the Employer to penalize a member in default. The proviso furnishes no warrant for a union externally to cause an employer to discriminate against an employee in regard to a condition of employment in order to encourage membership or the retention of membership in a union nor does it permit a union to enforce its rules by causing an employer to penalize or discriminate against members who violate its rules. In other words, the proviso does not reserve to a union the right to compel obedience by causing an employer to discipline an offending member, as the Respondent Union did in this case, or otherwise to reopen the road to discrimination closed by Section 8 (a) (3).

33 Clearly the Employer discriminated against Boston when it reduced his seniority.

The Respondent arrogated to itself the Employer's control over employment, and to use such control to accomplish a clearly discriminatory reduction of Boston's seniority. It find that by its

conduct Respondent caused the Employer to discriminate against the Charging Party in violation of Section 8 (a) (3) which proscribes unequal treatment of employees in regard to any condition of employment to encourage or discourage membership in any labor organization.

When the Respondent executed the contract with the Employer it intended that the entire agreement, including the provision with respect to seniority, would be enforced to the end that employees failing to comply with the bylaw relating to the payment of dues would be penalized pursuant to its terms. Such enforcement of the contract constitutes discrimination in violation of Section 8 (a) (3). Consequently by participating on or about July 15, 1950, in the enforcement of the contract Respondent played a part in creating a condition which resulted in the subsequent discrimination.

Section 8 (b) (2) of the Act, which the Respondent is alleged to have violated, provides that it shall be an unfair labor practice for a labor organization or its agents "to cause or attempt to cause an employer to discriminate against an employee in violation of Section 8 (a) (3)." It has been found that Respondent caused the Employer to discriminate against the Charging Party in violation of the latter section. Accordingly, I find that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act. *H. M. Newman*, 85 N. L. R. B. 725. I find also that Respondent has restrained and coerced and is restraining and coercing employees in violation of Section 8 (b) (1) (A) thereof. *Clara-Val Packing Company*, 87 N. L. R. B. No. 120. My conclusion that Respondent violated the latter section does not automatically flow from my finding that it violated Section 8 (b) (2). It is predicated mainly on the fact that the specific act of the Union involving an economic reprisal against its member was itself violative of Section 8 (b) (1) (A).

The Board has held that a violation of Section 8 (b) (1) 34 (A) does not invariably stem from a union's violation of Section 8 (b) (2). But when as here, Respondent's objective was directed at compelling employees to forego their rights including the right to refrain from assisting a labor organization, which Section 7 protects, I have concluded that by causing the Employer discriminatorily to reduce Boston's seniority, the Union restrained Boston in the exercise of his rights guaranteed under Section 7 and thereby violated Section 8 (b) (1) (A).

The normal effect of the discrimination against Boston was to encourage nonmembers to join the Union, as well as members to retain their good standing in the Union, a potent organization whose assistance is to be sought and whose opposition is to be avoided. The Employer's conduct tended to encourage member-

ship in the Union.¹³ Its discrimination against Boston had the further effect of enforcing rules prescribed by the Union, thereby strengthening the Union in its control over its members and its dealings with their employers and was thus calculated to encourage all members to retain their membership and good standing either through fear of the consequences of losing membership or seniority privileges or through hope of advantage in staying in. In deciding this case, I have been influenced by the rationale of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., Local 291, (Vernon J. Luebke), 92 N. L. R. B. No. 156 and cases therein discussed, rather than by the exposition of principles contained in Respondent's brief.

Section 9 (c) of the Act, asserting as it does, that the expression of views, argument, or opinion containing no threat of reprisal or force or promise of benefit shall not constitute or be evidence of an unfair labor practice, invoked as a defense in Respondent's answer, was not relied upon in the trial of the case, and has no applicability to its facts.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in Section III, above, occurring in connection with the operations of the
35 Employer described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

1. The Respondent notify the Charging Party and the Employer, in writing, that it withdraws its request that the Charging Party's seniority be reduced from the position in which it stood on or about July 15, 1950, and that it requests the Employer to offer the Charging Party, immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges.

¹³ If, as Respondent appears to suggest, its conduct discouraged membership in a labor organization, it could be argued that from the plain meaning of Section 8 (a) (3), a union would equally violate the Act by causing an employer to discriminate against an employee in order to rid itself of slow-paying or otherwise recalcitrant members.

2. The Respondent make whole the Charging Party for any losses of pay and other incidents of the employment relationship which he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of the discrimination to 5 days after the date on which the Union serves upon the Respondent the above-described written request. The losses of pay, if any, shall be computed upon a quarterly basis in the manner recently established by the Board.¹⁴

Upon the basis of the above findings of facts and upon the entire record in the case, I make the following:

Conclusions of law

1. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

2. By causing, and attempting to cause, the Employer to discriminate against employees in violation of Section 8 (a) (3) of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

36 3. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, I hereby recommend that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L., its officers, representatives, and agents, shall:

1. Cease and desist from:

(a) Causing, or attempting to cause, Byers Transportation Company, Inc., its agents, successors, or assigns to reduce the seniority of, or otherwise discriminate against employees in violation of Section 8 (a) (3) of the Act; and

(b) In any other manner restraining or coercing employees of Byers Transportation Company, Inc., its successors or assigns, in the exercise of their rights to engage in, or to refrain from en-

¹⁴ F. W. Woolworth Company, 90 N. L. R. B. No. 41.

gaging in, any or all of the concerted activities guaranteed in Section 7 of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Immediately notify, in writing, Frank Boston at his last known place of residence, and Byers Transportation Company, Inc., that it withdraws its request that Frank Boston's seniority be reduced from the position in which it stood on or about July 15, 1950, and that it requests said employer to offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudices to seniority or other rights and privileges;

(b) Make whole said Frank Boston for any losses of pay and other incidents of the employment relationship which he may have suffered because of the discrimination against him in the manner described in "The Remedy";

(c) Post in conspicuous places in its business offices, and wherever else notices to its members are customarily posted, copies of the notice attached hereto as Appendix A. Copies of said notice, to be furnished by the Regional Director for the Seventeenth Region, shall, after being duly signed by the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Mail to said Regional Director signed copies of the notice attached hereto as Appendix A, for posting, the Employer willing, at the office and place of business of the Employer in Kansas City, Missouri, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by said Regional Director, shall, after being duly signed by the Respondent, be forthwith returned to the Regional Director for such posting; and

(e) File with said Regional Director within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, a report in writing, setting forth in detail the steps which the Respondent has taken to comply herewith.

It is further recommended that unless Respondent within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, notifies said Regional [fol. 60] Director in writing that it will comply with the foregoing Recommendations, the National Labor Relations Board issue an order requiring it to take the action aforesaid.

Dated at Washington, D. C., this 18 day of January, 1951.

STEPHEN S. BEAN,
Trial Examiner.

Appendix A

NOTICE

To All Members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L., and to All Employees of Byers Transportation Company, Inc., Kansas City, Missouri:

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

We Will Not cause, or attempt to cause, Byers Transportation Company, Inc., its agents, successors, or assigns, to reduce the seniority of employees or otherwise discriminate against employees in violation of Section 8 (a) (3) of the National Labor Relations Act.

We Will Not in any other manner restrain or coerce employees of Byers Transportation Company, Inc., its successors or assigns, in the exercise of their right to engage in, or to refrain from engaging in, any or all concerted activities guaranteed in Section 7 of the National Labor Relations Act.

We Will immediately notify Frank Boston, and Byers Transportation Company, Inc., that we have no objection to the immediate reinstatement of Frank Boston to his former or substantially equivalent position and standing on the seniority list of and as an employee of Byers Transportation Company, Inc.

39 We Will make whole Frank Boston for any loss of pay and other incidents of the employment relationship suffered because of the discrimination against him.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA, OVER-THE-ROAD AND CITY
TRANSFER DRIVERS, HELPERS, DOCKMEN AND
WAREHOUSEMEN, LOCAL UNION NO. 41,
A. F. L.

(Labor Organization.)

By _____,
(Representative) (Title).

Dated _____

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

In United States Court of Appeals

Petition for enforcement of an order of the National Labor Relations Board

Filed in U. S. Court of Appeals September 20, 1951

No. 14457

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, OVER-THE-ROAD AND CITY TRANSFER DRIVERS, HELPERS, DOCKMEN AND WAREHOUSEMEN, LOCAL UNION NO. 41, A. F. L., RESPONDENT

To the Honorable, the Judges of the United States Court of Appeals for the Eighth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 40 Supp. IV Secs. 151, et seq.), herinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L., its officers, representatives, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. L. and Frank Boston, an Individual, Case No. 17-CB-36."

In support of this petition the Board respectfully shows:

(1) Respondent is a labor organization engaged in protecting and promoting the interest of its members in the State of Missouri, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on June 26, 1951, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, its officers, representatives, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41 A. F. L., its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Byers Transportation Company, Inc., its officers, agents, successors, and assigns to reduce the seniority of, or otherwise discriminate against, any of its employees because they are delinquent in their payment of dues to International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41 A. F. L., except in accordance with Section 8 (a) (3) of the Act;

(b) In any other manner causing or attempting to cause said Employer, its officers, agents, successors, and assigns, to discriminate against any of its employees in violation of Section 8 (a) (3) of the Act;

(c) Restraining or coercing employees of Byers Transportation Company, Inc., in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Immediately notify, in writing, Frank Boston at his last known place of residence, and Byers Transportation Inc., that it withdraws its request that Frank Boston's seniority be reduced from the position in which it stood on or about July 15, 1950, and that it requests said Employer to offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to seniority or other rights and privileges:

(b) Make whole said Frank Boston for any losses of pay and other incidents of the employment relationship which he may have suffered because of the discrimination against him in the manner described in that section of the Board's decision entitled "The Remedy";

(c) Post in conspicuous places in its business offices, and wherever else notices to its members are customarily posted, copies of the notice attached hereto as Appendix A.¹⁵ Copies of said notice,

¹⁵ In the event this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted in the notice before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

to be furnished by the Regional Director for the Seventeenth Region shall, after being duly signed by an official representative of the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Mail to the Regional Director for the Seventeenth Region signed copies of the notice attached hereto as Appendix A for posting, the Employer willing, at the office and place of business of the Employer in Kansas City, Missouri, in places where notices to employees are customarily posted. Copies of said notice to be furnished by said Regional Director, shall, after being signed as provided in paragraph 2 (c) of this Order, be forthwith returned to the Regional Director for such posting; and

(e) Notify the Regional Director for the Seventeenth Region, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith.

(3) On June 26, 1951 the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondent, its officers, representatives, agents, successors, and assigns, to comply therewith.

NATIONAL LABOR RELATIONS BOARD,
By A. NORMAN SOMERS,

Assistant General Counsel.

Dated at Washington, D. C., this 13th day of September 1951.

Appendix A

FORM OF NOTICE POSTED, ETC. OMITTED. PRINTED SIDE PAGE 26
ANTE

In United States Court of Appeals

Answer to petition for enforcement

Filed in U. S. Court of Appeals on September 24, 1951

[Title omitted.]

To the Honorable, the Judges of the United States Court of Appeals for the Eighth Circuit:

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen,
45 Local Union No. 41, A. F. L., Respondent herein, for answer to the petition of the National Labor Relations Board for enforcement of its order:

1. Admits the allegations of paragraph 1 of said petition.
2. Admits that the Board made the order referred to in paragraph 2 of said petition.
3. Admits the allegations of paragraph 3 of said petition.
4. Denies that respondent:
 - a. Has caused or attempted to cause Byers Transportation Company, Inc., to reduce the seniority of or otherwise discriminate against any of its employees because were delinquent in their payment of dues to Respondent.
 - b. In any other manner caused or attempted to cause said employer to discriminate against any of its employees in violation of Section 8 (a) (3) of the National Labor Relations Act.
 - c. Restrained or coerced employees of Byers Transportation Company, Inc., in the exercise of the rights guaranteed them in Section 7 of the Act.

Wherefore, having fully answered, Respondent prays that the petition for enforcement be denied.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS
OF AMERICA, OVER-THE-ROAD AND CITY
TRANSFER DRIVERS, HELPERS, DOCKMEN AND
WAREHOUSEMEN, LOCAL UNION No. 41,
A. F. L.

By CLIF. LANGSDALE,

By JOHN J. MANNING,

*Attorneys for Respondent, 922 Scarritt Building, Kansas
City, Missouri, Victor 9880.*

Portions of Record printed as an appendix to brief of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Over-the-Road and City Transfer Drivers, Helpers and Dockmen and Warehousemen, Local Union No. 41, A. F. L.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SEVENTEENTH REGION

[Title omitted.]

ROOM 304, FIDELITY BUILDING,
911 WALNUT STREET, KANSAS CITY, MISSOURI,
Tuesday, November 21, 1950.

Transcript of hearing

Pursuant to notice, the above-entitled matter came on for hearing at 10 o'clock a. m.

Before: STEPHEN S. BEAN, Esq., Trial Examiner.

Appearances

William J. Scott, Esq., 1411 Fidelity Building, Kansas City, Missouri, Counsel for General Counsel.

John J. Manning, Esq., 922 Scarritt Building, Kansas City, Missouri, Appearing on Behalf of the Respondent.

Mr. SCOTT. Now, in our off-the-record discussion, it is my understanding that Mr. Manning, counsel for Local 41, admits the allegations in the first eight paragraphs of the complaint.

Trial Examiner BEAN. Is that correct?

Mr. MANNING. That is correct; yes, sir.

PAUL HOWARD BYERS, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. SCOTT:

Q. State your full name, Mr. Byers.—A. Paul Howard Byers.

Q. Where do you live, Mr. Byers?—A. 4419 Roanoke Parkway.

Q. What is your business, Mr. Byers?—A. I am associated with my father in business, truck transportation.

Q. And what company?—A. Byers Transportation Company, Incorporated.

Q. Are you acquainted with Mr. Frank Boston, the charging party in this case?—A. He is an employee of our company.

Q. And how long has he been an employee of your company?—
A. I don't know the exact time, I don't know. For a period of years.

Q. Would it be as many as four years in your opinion?—A. I don't know exactly how long he has.

Q. The counsel for Local 41 has admitted that Local 41 at all times material hereto has been the bargaining representative for your employees. Have you had a written agreement with the Local 41?—A. Yes, sir.

(Thereupon a document was marked as "General Counsel's Exhibit No. 2" for identification.)

54 Q. I hand you what has been identified as General Counsel's Exhibit 2 and ask you what that is?—A. That is the agreement that we have with Local 41.

Q. And how long has that agreement been in effect at your plant?—A. Since its inception. Since the time it's covered by the contract here on the front.

Q. Which is from November 16, 1949?—A. To the present time, to and including January 31, 1952.

Q. And is that contract, does it cover the working conditions, hours of employment and so forth with Mr. Frank Boston?—A. Yes.

Mr. SCOTT. We ask that General Counsel's Exhibit No. 2 be admitted.

Mr. MANNING. No objection.

Trial Examiner BEAN. It will be admitted.

(The document heretofore marked "General Counsel's Exhibit No. 2," for identification, was received in evidence.)

By Mr. SCOTT:

Q. Now, do you recall that on or about July 5 of this year any conversation with any representative of the union as to Mr. Boston's seniority?—A. No; there was no conversation.

Q. Well, what took place regarding his seniority in July of this year?—A. Well, we submit a list of our employees to the union with their anniversary date of their employment and in turn the union supplies us with a seniority list.

Q. Well, who fixes the seniority of your employees?—A. The union.

Q. And on what basis? How is it fixed?—A. On the basis of our agreement. I assume it is from the anniversary date of the employees plus the agreements in this contract that govern the employee.

Q. They tell you whether such and such an employee is No. 1 or No. 2?—A. Yes.

General Counsel's Exhibit 2

55 Central States Area Over-the-Road Motor Freight Agreement covering drivers employed by private, common and contract carriers for the period of November 16, 1949, to January 31, 1952, in the following territory: Michigan, Ohio, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas, and operations into and out of all contiguous territory.

The ----- hereinafter referred to as the
(Company)
Employer, and the Central States Drivers Council and Local Union No. -----, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., hereinafter referred to as the Union, agree to be bound by the terms and provisions of this Agreement.

Hourly and mileage rates appearing in this agreement in bold-face type are effective for the period from November 16, 1949, to and including January 31, 1951.

Hourly and mileage rates appearing in italics enclosed in brackets are effective for the period from February 1, 1951, to and including January 31, 1952.

56 ARTICLE I. SCOPE OF AGREEMENT

SECTION 1. OPERATIONS COVERED

The execution of this Agreement on the part of the Employer shall cover all over-the-road operations of the Employer within, into, and out of the Area and Territory described above.

SECTION 2. EMPLOYEES COVERED

(a) Employees covered by this Agreement shall be construed to mean any driver, chauffeur, or driver-helper operating a truck, tractor, motorcycle, passenger or horse-drawn vehicle, or any other vehicle operated on the highway, street or private road for transportation purposes when used to defeat the purposes of this Agreement.

STUDENT DRIVER

(b) Employees on student trips shall be paid in accordance with the provisions of this Agreement.

SECTION 3. CITY OR LOCAL WORK

Local dock work or city pickup and delivery service is not subject to the terms and conditions of this Agreement, but is subject

to separate agreements entered into between the Employer and the involved Local Union. Employees subject to this Agreement shall not be permitted to perform dock work or city pickup and delivery service, except as specifically permitted herein.

The prevailing Local Union city cartage contract shall govern all wages and conditions on runs exclusively within a radius of twenty-five (25) miles of the home terminal, provided the hourly wage rates are equal to or higher than the peddle rate in this contract; otherwise the peddle rate shall apply.

57 SECTION 4. TRANSFER OF COMPANY TITLE OR INTEREST

This Agreement shall be binding upon the parties hereto, their successors, administrators, executors and assigns. In the event an entire operation is sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership or bankruptcy proceeding, such operation shall continue to be subject to the terms and conditions of this Agreement for the life thereof. On the sale, transfer or lease of an individual run or runs, only the specific provisions of this contract, excluding supplements or other conditions, shall prevail. It is understood by this section that the parties hereto shall not use any leasing device to a third party to evade this contract.

SECTION 5. RIDERS

Riders or supplements to this Agreement providing for better wages, hours and working conditions, which have previously been negotiated by Local Unions and Employers affected and put into effect, shall be continued. No new riders or supplements to this Agreement shall be negotiated by any of the parties hereto.

ARTICLE II. UNION SHOP AND DUES

SECTION 1

(a) The Union shall be the sole representative of those classifications of employees covered by this Agreement in collective bargaining with the Employer. The Employer agrees that any and all employees within the classification of work as herein provided shall be members of the Union in good standing as a condition of continued employment. When the Employer needs additional men, he shall give the Union equal opportunity with all other

sources to provide suitable applicants, but the Employer shall not be required to hire those referred by the Union.

If a nonmember is hired, he shall work under the provisions of this Agreement, shall make application for membership in the Union, and become a member no later than the thirty-first

(31st) day of his employment, and shall thereafter maintain membership in good standing in the Union as a condition of continued employment.

The above paragraph shall not apply to any Union, party to this Agreement, until such time as it is properly certified by the National Labor Relations Board as being authorized to enter into such Agreement, nor shall it apply in any state where prohibited by state law.

If the first paragraph hereof is invalid under the law of any state wherein this contract is executed, it shall be modified to comply with the requirements of state law or shall be renegotiated for the purposes of adequate replacement.

In those instances where the first paragraph of this clause may not be validly applied, the Employer agrees to recommend to all employees that they become members of the Union and maintain such membership during the life of this Agreement, to refer new employees to the Union representative, and to recommend to delinquent members that they pay their dues since they are receiving the benefits of this contract.

59 All of the provisions of this section shall be automatically amended to embody the greater Union security provisions contained in the 1947-1949 Central States Area Over-the-Road Motor Freight Agreement or to extend to situations not now permitted, to the extent that such amendments or extensions become permissible under applicable State and Federal Law during the life of this Agreement as a result of legislative, administrative or judicial determination.

Nothing contained in this section shall be construed so as to require the Employer to violate any applicable law.

(b) A new employee shall be employed only on a thirty-day trial basis, during which period he may be discharged without further recourse, provided, however, that the Employer may not discharge or discipline for the purpose of evading this Agreement or discriminating against Union members. After thirty days the employee shall be placed on the regular seniority list.

(c) In case of discipline within the thirty-day period, the Employer shall notify the Union in writing.

SECTION 2

The Employer agrees to deduct from the pay of all employees covered by this Agreement dues, initiation fees and/or assessments of the Local Union having jurisdiction over such employees and agrees to remit to said Local Union all such deductions. Where laws require written authorization by the employee, the same is to be furnished in the form required.

ARTICLE III. STEWARDS

The Employer recognizes the right of the Union to designate a job steward and alternate to handle such Union business as may from time to time be delegated to them by the Union. Job stewards and alternates have no authority to take strike action or any other action interrupting the Employer's business in violation of this Agreement, except as authorized by official action of the Union. The Employer recognizes this limitation upon the authority of job stewards and their alternates. The Employer, in so recognizing such limitation, shall have the authority to render proper discipline, including discharge without recourse, to such job steward or his alternate, if he be an employee, in the event the job steward or his alternate has taken unauthorized strike action, slow down, or work stoppage in violation of this Agreement. Job steward, where possible, shall be an employee of the Employer. It is recognized that in certain cases it will not be practicable or feasible for the job steward to be such an employee, but the parties hereto shall cooperate to effectuate the intent of this Article.

ARTICLE IV. ABSENCE

SECTION 1. TIME OFF FOR UNION ACTIVITIES

The Employer agrees to grant the necessary and reasonable time off, without discrimination or loss of seniority rights and without pay, to any employee designated by the Union to attend a labor convention or serve in any capacity on other official Union business, provided 48 hours' written notice is given to the Employer by the Union, specifying length of time off. The Union
61 agrees that, in making its request for time off for Union activities, due consideration shall be given to the number of men affected in order that there shall be no disruption of the Employer's operations due to lack of available employees.

SECTION 2. LEAVE OF ABSENCE

Any employee desiring leave of absence from his employment shall secure written permission from both the Union and the Employer. Failure to comply with this provision shall result in the complete loss of seniority rights of the employees involved. Inability to work because of proven sickness or injury shall not result in the loss of seniority rights.

ARTICLE V. SENIORITY

SECTION 1

Seniority rights for employees shall prevail. Seniority shall be broken only by discharge, voluntary quit, or more than a two-year lay-off. In the event of a lay-off, an employee so laid off shall be given two weeks' notice of recall mailed to his last known address. In the event the employee fails to make himself available for work at the end of said two weeks, he shall lose all seniority rights under this Agreement. A list of employees arranged in the order of their seniority shall be posted in a conspicuous place at their place of employment. Any controversy over the seniority standing of any employee on this list shall be referred to the Union for settlement.

SECTION 2

The Employer shall not require, as a condition of continued employment, that an employee purchase truck, tractor and/or tractor and trailer or other vehicular equipment.

62

SECTION 3

(a) All runs and new positions are subject to seniority and shall be posted for bids. Posting shall be at a conspicuous place so that all eligible employees will receive notice of the vacancy, run or position open for bid, and such posting of bids shall be made not more than once each calendar year, unless mutually agreed upon. Peddle runs shall not be subject to bidding. Past practices shall prevail in bidding on peddle runs.

(b) When it becomes necessary to reduce the working force, the last man hired shall be laid off first, and when the force is again increased, the men are to be returned to work in the reverse order in which they are laid off.

SECTION 4

(a) In the event that the Employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees absorbed or affected thereby shall be determined by the Union or Unions having jurisdiction over said employees.

(b) If the minimum wage, hour and working conditions in the company absorbed differ from those minimums set forth in this Agreement, the higher of the two shall remain in effect for the men so absorbed.

ARTICLE VI. MAINTENANCE OF STANDARDS

SECTION 1. PROTECTION OF CONDITIONS

The Employer agrees that all conditions of employment relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest minimum standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be im-

* * * * *

63 desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

63

SECTION 2

It is further provided that where no such cancellation or termination notice is served and the parties desire to continue said Agreement but also desire to negotiate changes or revision in this Agreement, either party may serve upon the other a notice, at least sixty (60) days prior to January 31, 1952, or January 31st of any subsequent contract year, advising that such party desires to continue this Agreement but also desires to revise or change terms or conditions of such Agreement.

SECTION 3

Revisions agreed upon or ordered shall be effective as of February 1, 1952, or February 1st of any subsequent contract year. The respective parties shall be permitted all legal or economic recourse to support their request for revisions if the parties fail to agree thereon.

64 In witness whereof the parties hereto have set their hands and seals this 12th day of November 1949, effective as of November 16, 1949.

NEGOTIATING COMMITTEES

For the employees: Central States Drivers Council: James R. Hoffa (Chairman), Harry W. Card, Walter E. Biggs, E. J. Williams, John O'Brien, E. E. Hughes, J. F. Scislowski, Sidney L. Brennan, J. D. White, Floyd R. Hayes, Peter Capellupo, Michael J. Healy (Chairman of Council), Arthur F. Hudson (Executive Secretary), David Previant (General Counsel).

For the employees: Central States Area Employees Association: Earl N. Cannon (Chairman), Glenn W. Stephens (Counsel), C. L. Jones, H. C. Sanford, E. W. Krause, R. L. Cheek, John C. Brennan, Warren Taussig, K. H. Grant, C. J. Buhner, E. W.

Murphy, Alex Scherer, W. J. Creagan, A. A. Zebrowski, Walter Mullady.

Michigan Trucking Labor Division: Frank Blunden (Chairman), L. D. Rahilly, A. Robertson, J. H. Minnick, A. C. Scott, Don Smith, Jack Craig, Ed Hess, C. D. Matheson (General Counsel), A. D. Matheson (Secretary).

Midwest Operators Association: R. J. Babcock, M. M. Krupinsky, J. J. Brady, W. J. McCarthy (General Manager).

Missouri-Kansas Motor Carriers Conference: F. G. Campbell (Chairman), Ezra Knaus, W. Orscheln, C. J. Morse (Secretary).

Steel Truckers Employers Association: George Maxwell (Secretary).

The Santa Fe Trail Transportation Company: C. F. Offenstein (Ass't to Vice President), W. A. Gammon (Ass't Vice President).

TransAmerican Freight Lines, Inc.: R. B. Gotfredson, President.

Keeshin-Hayes Freight Lines, Inc.: J. L. Keeshin (Chairman of Board).

65 Ohio Over-the-Road Employers: L. P. O'Brien (Chairman), R. F. Todd (Secretary), C. J. Madigan, R. L. Thompson, D. H. Gilhousen, C. Baldwin, R. Riley, G. L. Smith, H. O. Saunders, C. Kelly, T. Cronin, B. Dickinson, O. M. Lattavo, J. W. Sentle, George Devaul.

66 Local Union No.-----, affiliate of I. B. of T., C., W., & H., of A., A. F. L.

By-----

(Company)

By-----

Its-----

(Title)

Home office address:

(Street)

(City)

(State)

This contract is approved as to form only by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and in doing so the International Union assumes no liability whatsoever under this contract for the performance thereof or otherwise, and by such approval does not become a party to the agreement.

Approved September 22, 1949.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

CHAUFFEURS, WAREHOUSEMEN AND HELPERS,

THOMAS E. FLYNN,

Acting for Daniel J. Tobin, General President.

MIDWEST AREA



The boundary line referred to as separating the so-called eastern and western parts of the Central States Area starts on the south shore of Lake Superior at Ashland, Wisconsin, and thence runs generally in a direct line to Wausau, Stevens Point, Mauston, and New Lisbon to the Mississippi River at La Crosse, Wisconsin, and thence runs southward via the Mississippi River to the southern boundary of Missouri, as per map agreed to as Exhibit "A" by the Negotiating Committees. The portion of the territory west of such described boundary line is commonly referred to as Midwest Area.

INDEX

Absence, Article IV.....	6
Bonds, Article XII.....	15
Break-downs or Impassable Highways, Article XXI, Section 4.....	19
Call-in Time, Article XXII, Section 2.....	19
City or Local Work, Article I, Section 3.....	2
Compensation Claims, Article XVI.....	16
Contiguous Territory, Preamble and Article VII, Section 2.....	10
Coverage of Contract, Preamble.....	1
Deadheading, Article XXII, Section 5.....	20
Defective Equipment, Article XX.....	18
Discharge or Suspension, Article X.....	14
Dues, Article II.....	3
Employees Covered, Article I, Section 2 (a).....	2
Examination of Records, Article VII, Section 6.....	10
Examinations and Identification Fees, Article XIII.....	15

Extra-Contract Agreements, Article VI, Section 2.....	9
Grievance Machinery and Union Liability, Article VIII.....	11
Grievance Machinery Committees, Article VII.....	9
Guarantees (Minimum), Article XXIV.....	21
Health and Welfare Benefits, Article XXXIV.....	36
Hourly (and Mileage) Rates, Article XXV.....	22
Identification Fees (and Examination), Article XIII.....	15
Lay-overs, Article XXII, Section 3.....	19
Leave of Absence, Article IV, Section 2.....	7
Lodging, Article XIX.....	17
Loss or Damage, Article XI.....	14
Maintenance of Standards, Article VI.....	8
Meal Period, Article XVIII.....	17
Mileage Determination, Article XXV, Section 2.....	24
Mileage and Hourly Rates, Article XXV.....	22
Military Clause, Article XVII.....	17
Multiple Leg Runs, Article XXX.....	28
69 New Equipment, Article VI, Section 4.....	9
Operations Covered, Article I, Section 1.....	2
Owner-Operator Rates, Article XXXII, Section 12 (b).....	31
Owner-Operators, Article XXXII.....	29
Paid-for Time, Article XXII.....	18
Passengers, Article XV.....	16
Pay Period, Article XXI.....	18
Peddle Runs, Article XXVI.....	25
Perishable Commodities Only, Article XXXVIII.....	38
Pickup and Delivery Limitations, Article XXIII.....	20
Posting of Agreement, Article XXXVI.....	36
Protection of Rights, Article IX.....	13
Rates, First and Second Year.....	1
Riders, Article I, Section 5.....	3
Scope of Agreement, Article I.....	2
Seniority, Article V.....	7
Steel Haul Only, Article XXXVII.....	36
Stewards, Article III.....	6
Student Driver, Article I, Section 2 (b).....	2
Subsequent Runs, Article XXIX.....	27
Suspension (or Discharge), Article X.....	14
Termination Clause, Article XXXIX.....	38
Through Runs, Article XXVIII.....	26
Time Off for Union Activities, Article IV, Section 1.....	6
Time Sheets, Article XXXV.....	36
Transfer of Company Title or Interest, Article I, Section 4.....	3
Turn-around Runs, Article XXVII.....	25
Two-Man Operations, Article XXXI.....	28
Uniforms, Article XIV.....	16
Union Liability (and Grievance Machinery), Article VIII.....	11
Union Shop and Dues, Article II.....	3
Vacations, Article XXXIII.....	35
Workweek Reduction, Article VI, Section 3.....	9

70 Q. Now, then, in July of this year Mr. Boston lost his seniority, did he not?—A. His position on the seniority board changed, yes.

Q. It changed from what position?—A. I don't remember.

Q. Well, was it up near the top, do you recall?—A. Yes; I would say he was in the upper half.

Q. And was it reduced?—A. His seniority, do you mean?

Q. Yes.—A. His was in a different position; yes, sir.

Q. And that position, where was that?—A. I would say it was in the lower half.

Q. Didn't it go to the bottom?—A. I don't remember on that particular date whether he was the bottom man or not. I don't think he was. I think that there were other men that were employed during that period. When the union made the seniority list he was somewhere near the bottom. I don't recall actually whether he was the bottom or not.

Q. Who posted the list with his name reduced in seniority?—A. The list was submitted by the union and I personally posted it on the bulletin board.

Q. Did you have anything to do with his reduction in seniority?—A. No; nothing other than our agreement with the union.

Q. And were you told why he was reduced?—A. Officially by the union; no.

Q. Who gave you the seniority list, Mr. Byers, to post?—A. I don't remember.

Q. Well, it was some official of the union, was it not?—A. I don't remember if it came from an official of the union or through the mail from the union.

Q. Well, have you an opinion as to whether or not it came from the union?—A. Oh, yes; it came from the union.

Q. How often do you post changes in seniority at your plant?—A. Oh, I would say it varies. The reason that it
71 varies is that employment turn-over is greater. Why we submit the list more often for this seniority.

Q. You knew why Mr. Boston was reduced in seniority, did you not?—A. Officially, no.

Q. Well, had any act or conduct on his part in the conduct of his job have anything to do in the reduction of his seniority?—A. No; none other than our agreement.

Q. The company didn't demote him, did they?—A. No.

Q. Would you say his demotion came solely as the result of the union?

Mr. MANNING. Just a minute. I object to that as speculation.

Trial Examiner BEAN. Well, it does call for a conclusion. Strike it out. Reform your question, Mr. Scott.

By Mr. SCOTT:

Q. How are your drivers employed in regard to seniority? Does being at the top of the seniority list give them preference on a man below them?

Mr. MANNING. Just a minute. General counsel has introduced an exhibit which contains the seniority provisions. I think the exhibit speaks for itself and the witness should not be questioned as to what is already in writing and in agreement between the parties.

Mr. SCOTT. Well, I am not wanting him to interpret that agreement. I will withdraw whatever the question is now pending and ask you this, Mr. Byers.

By Mr. SCOTT:

Q. What effect did it have on Mr. Boston's employment when he was reduced in seniority?—A. As far as the company is concerned it had not effect on his employment. It effects him in that his position on the seniority board puts him in a bidding position for any job that the men might interpret as a better job.

Q. Well, isn't this also true, that the drivers are called out in their position of seniority?—A. Yes, sir. They are
72 called out according to their bidding position. They bid their position by seniority.

Q. And do you know whether or not Mr. Boston lost some trips as a result of losing his seniority?—A. I can't honestly say, I don't remember.

Q. You could find that out, could you not?—A. Yes.

Trial Examiner BEAN. May I interrupt right here? I don't want to too often.

By Trial Examiner BEAN:

Q. Suppose a man is No. 40 on the seniority list and there were 35 jobs on a given day. I take it he wouldn't work that day, is that correct?—A. That is correct.

Q. Or if he happened to be 15 on that seniority list he would have worked on that given day?—A. That's correct.

Mr. SCOTT. That is all.

Cross-examination by Mr. MANNING:

Q. Mr. Byers, I call your attention to Article 5 on page 7 of the contract which has been introduced as General Counsel's Exhibit No. 2 which is the seniority clause of the contract and also to subparagraph (b) of Article 2 which appears on page 5 of the contract. The last line of this subparagraph (b) reads "After 30 days the employee shall be placed on the regular seniority list." That is correct, isn't it?—A. Yes, sir.

Q. I also call your attention to page 8, Section 4 of Article 5, subparagraph (a) of Section 4, which reads, "In the event that the employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees absorbed or affected thereby shall be determined by the union or unions having jurisdiction over said employees." That is your understanding of the contract, isn't it?—A. Yes, sir.

Q. Whenever there is a merger of the lines or a taking over of haul by your company or some company takes over one of your hauls, the union determines the seniority of the men on that haul and with your company, if it is involved, will be affected?—A. That's correct.

Q. Turning again to Section 1 of Article 5, the last sentence of that section reads, "Any controversy over the seniority standing of any employee on this list shall be referred to the union for settlement." Is it your understanding that all matters of seniority standing of the employees covered by the contract are left to the union for settlement?—A. Yes.

Q. Now, that follows after they become placed on the seniority list by the operation of Article 2 at the end of the first 30 days of employment?—A. Yes.

Q. Section 1 provides that seniority shall be broken only by discharge, voluntary quitting or than a two year layoff. You do not regard, do you, Mr. Byers, a reduction in place on the seniority list as breaking seniority? Do you understand my question?—A. Would you—

Q. I will rephrase it. When we speak of seniority being broken that is the removal from the list entirely, is it not?—A. Yes.

Q. In other words, if a man quit or is discharged or if he is on a layoff for more than two years his name is taken clear off of the seniority list?—A. That's right.

Q. And that is what you refer to as broken seniority?—A. Yes.

Q. If he is reduced in standing on the seniority list that is, from the, for example, the 40th position to the 20th position or rather from the 20th to the 40th position, that is not breaking his seniority or terminating, that is simply reducing it, isn't that true?—A. That is correct.

Q. And the employee remains on the seniority list?—A. Yes; that is correct.

Q. Are you familiar with Section 45 of the bylaws of Local Union 41?—A. No; I am not.

Q. You are not. Are you familiar with the fact that when employees who are members of Local 41 become delinquent for more than a month in their dues to that union their seniority standing is affected by the union's bylaws?—A. Yes; I am.

Q. Have you had instances in the past where employees have become delinquent in their dues and have been reduced in seniority standing?—A. Yes; we have.

Mr. SCOTT. Well, we think that is irrelevant and immaterial and ask that the answer be stricken.

Mr. MANNING. I want to tie it up with some further questions, if the Examiner please.

Trial Examiner BEAN. Of course, it seems to me possibly that you are verging on having the witness put in plain language the meaning of the contract and the bylaws and until such time as you can show that there is susceptible interpretations, I rather feel that you should not go into the interpretations.

Mr. MANNING. I want to show, Mr. Examiner, how they have interpreted it so that it if appears clear to you and appears unambiguous it may not appear so to them because apparently they have interpreted the contract to mean that members who are affected by this bylaw, instances of members being affected by this bylaw, are controversies within the meaning of this Section 1 of Article 5. They have uniformly, I know this area, but all

75 carriers in this area have agreed that those are controversies and that those matters are referred to the union for settlement and there have been literally hundreds of cases.

Now, certainly the testimony of this witness and other witnesses as to their interpretation of that section of the contract should be material and relevant since they are the ones who live under the contract and who are affected by it.

Trial Examiner BEAN. I am disposed to give both parties ample opportunity to offer evidence that they feel is relevant in the issues but it seems to me that this point, so far as we have gone, that would really be a fundamental issue here and that is whether or not I assume the general counsel contends there was an enforcement or application of an illegal union shop contract and still further that the general counsel contends that by enforcing or applying that illegal union shop contract the respondent union caused the employer to discriminate against Mr. Boston in regard to a condition of employment thereby encouraging membership in the union. Is that in substance your case, if I am getting the issue?

Mr. SCOTT. Well, I think that is one issue. They have in effect had an agreement for a union shop. Article 2 says that the unions shall be the sole representative of those classifications of employees covered by this agreement and the employer agrees that any and all employees within the classification of work herein provided shall be members of the union in good standing as a condition of continued employment.

Mr. MANNING. Mr. Examiner, he doesn't read you the paragraph on page 4.

Mr. SCOTT. I am reading Article 2 on page 3.

Mr. MANNING. Yes. And continuance of Article 2 on page 4, second paragraph says, the above paragraph which is the one he just read, shall not apply to any union, party to this agreement, until such time as it is properly certified by the National Labor Relations Board as being authorized to enter into such agreement, nor shall it apply in any state where prohibited by state law. See, we haven't agreed that there has been any U. A. election. That paragraph would apply and the Section 1 of Article 2 would not apply to this union.

Trial Examiner BEAN. Well, I will allow that last question that we started out discussing. So far it seems reasonably clear to me what the intention is of the meaning of Article 5, Section 1, and also the meaning of Section 45, bylaws. But it may be someone else reviewing, or whenever I do, will find that they are not so cocksure of themselves as I am at this time and hence will want to read our interpretation and over the objection of the general counsel I will allow that question. But I don't think it should be gone into in great detail.

Mr. MANNING. Well, I will not spend too much time on it. However, I feel that it is important particularly in view of the fact that we have had a similar clause before another Trial Examiner who took the position that it was not ambiguous and while the wording itself may be said to be unambiguous, apparently the parties to this contract have interpreted it to mean that it did include these instances where employees were affected by the non-payment of their dues and their bylaws set-up.

By Mr. MANNING:

Q. Now, Mr. Byers, you and your company have always interpreted the last sentence of Section 1, "Any controversy over the seniority standing of any employee on this list shall be referred to the union for settlement," to include instances where union members have become delinquent in their dues and have been reduced in seniority standing?—A. That is correct.

Q. The phrase, "Any controversy" as I understand it, includes such instances?—A. Yes, it does.

Q. Do you regard the fact of their having a standard which has been affected by their failure to pay their dues as a controversy which is included under Section 1 of Article 5?—A. That's correct.

Q. And I believe you have already testified that in your own company there have been many other instances where people have been, men have been reduced in seniority standing as a result of

their failure to pay dues and you have treated this contract in that manner?—A. That's correct.

Q. You did understand, as I believe, that the union did have a bylaw which called for reduction in seniority standing upon non-payment of dues?—A. That's right.

Q. Can you give us some specific instances of other men who have been reduced in seniority standing because of their nonpayment of union dues?

Mr. SCOTT. We think that is irrelevant, incompetent, and we object to it.

Trial Examiner BEAN. I think you have gone far enough, Mr. Manning. The witness has testified that there were other instances and I will exclude any further questioning along that line.

Mr. MANNING. As long as there isn't any question about the witnesses's memory or testimony in regard to it, I don't make any offer of proof.

Trial Examiner BEAN. It stands undeniably at the present time, at least.

Mr. MANNING. Yes.

I believe that is all.

Redirect-examination by Mr. SCOTT:

Q. Mr. Byers, does your company have any control over the seniority of your employees?—A. All question of seniority are referred to the union.

Q. The union has the sole authority to fix the seniority of the employees?—A. Yes.

78 Mr. MANNING. Just a minute. I object to that as argumentative.

Mr. SCOTT. I am merely summing up what he said.

Mr. MANNING. The fact is that the contract first fixes the question of seniority and their standing on the seniority list from that time on is then referred to the union by the contract.

Trial Examiner BEAN. I will allow the question. Do you understand the question? The question was, the union has sole control over the seniority. Can you answer that or have you? A. I don't know whether I have answered it or not. I would say, as Mr. Manning said, after their employment they have sole control over the employees seniority.

By Mr. SCOTT:

Q. When the union notifies you that an employee has lost his seniority, you do not dispute that fact, is that right? A. When we get a published list we operate according to the published seniority list, that is right.

Mr. SCOTT. I think that is all.

Re-Cross-Examination by Mr. MANNING:

Q. When you said, after their employment, you meant after the 30 days, the first 30 days of their employment?—A. After their selection and 30-day trial period.

Q. Once they go on the seniority list in compliance with the contract after the first 30 days of employment, the questions with respect to their standing on that seniority list are referred to the union for settlement?—A. That is right.

Q. All such questions?—A. Yes.

79 Q. Including these controversies over their having paid their dues and so forth?—A. Yes; all questions, any questions.

By Mr. SCOTT:

Q. When does an employee first have seniority standing?—A. I believe that an employee's seniority dates from his anniversary date of employment.

Q. Well, do you know anything about an employee's seniority before his name appears on a list that is furnished you by the union?—A. No, no. Well, we use the date, anniversary date tells us the time the entire employee's list is submitted to the union and they in turn give us a list which includes everybody.

Q. But they place an employee on the seniority list and show his place on the seniority list?—A. Yes.

Q. And you have nothing whatever to do with that?—A. No.

Mr. SCOTT. I believe that is all.

By Trial Examiner BEAN:

Q. Assuming you have 50 truck drivers and I should come to you today as No. 51 and not a member of the union, I want a job and you need me and you hire me, just what happens? Tell me, just trace my course up for a few weeks.—A. You apply for a job. We have a screening service that we send the employees through. After they come back, they come to us. If they are acceptable to that screening service we give them a student trip. After they make their student trip they fall into a position beneath the lowest man on the seniority board and make trips according to that, at which time their name is submitted to the union and they in turn give us the man's seniority standing in our company. If somebody quits, then you move up. If for any reason—

80 Q. And if I were accepted and went through that training and in all probability after a few weeks I would be certified by the union as No. 51, the lowest man on the seniority list?—A. That is correct.

By Mr. Scott:

Q. Suppose the union does not place a man on the seniority list. Then what happens?

Mr. MANNING. Wait a minute. That is assuming facts not in evidence. The contract provides that after 30 days of employment he automatically goes on the seniority list and so the question would be asking for an assumption or something that could not take place.

By Mr. Scott:

Q. Now, when Mr. Boston was reduced in his seniority, how was he able to acquire new seniority?—A. His seniority is the same as longevity. I mean time accumulates for a man.

Q. But he has to start actually from scratch and build up again?

Mr. MANNING. Just a minute. I object to that as not being intelligible.

Trial Examiner BEAN. Let me ask the question and see if there is any objection. Don't hesitate to object to my question if you think you should.

By Trial Examiner BEAN:

Q. There is no question that Mr. Boston's seniority was reduced down from a relatively high point to a relatively low point, is that correct?—A. That is correct.

Q. Does that mean he was then in a status of a man who had just started working and until those fellows above him died off, work up to the top again?—A. That is correct.

Q. He was about in the position of a newly hired employee?—A. Yes. It doesn't affect a man in such things as vacation. It does not affect him by his seniority standing. His seniority
81 is like I have said before, in his position, his ability to bid for a job that he might consider better than the one he is now in.

Q. Or to get a job when there are a few jobs?—A. Yes.

By Mr. MANNING:

Q. Other benefits of the contract which accrue to length of service are still his?—A. That's correct.

By Mr. Scott:

Q. In the event of a layoff, what employees would be laid off first?—A. The men laid off start at the bottom of our seniority list.

Mr. MANNING. I have no further questions.

Trial Examiner BEAN. Off the record.

(Discussion off the record.)

Trial Examiner BEAN. On the record.

By Mr. MANNING:

Q. Were there others on the list at the time that Mr. Boston was reduced who also were reduced to that same list?—A. Yes; there were.

Q. And were their names below his on the seniority list?—A. I don't remember. I don't remember whether they were below or above his.

By Mr. SCOTT:

Q. How many men did you have on your list at that time, Mr. Byers?—A. I believe there were fifty some men on the Kansas City seniority list.

Mr. MANNING. That is all.

By Trial Examiner BEAN:

Q. It is claimed that Mr. Boston was reduced from the 18th position to 54th position. Do you know offhand whether or not that is so?—A. No. I am not that familiar with it that I would know.

Q. You would be able to determine that from some record that you have if it is correct or if it is not correct?—A. Yes; that is correct.

82 Mr. SCOTT. That is all.

Trial Examiner BEAN. All right. You are excused.

Witness excused.

Trial Examiner BEAN. Call your next witness.

JAMES FRANK BOSTON, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. SCOTT:

Q. Will you please state your full name?—A. James Frank Boston.

Q. And where do you live, Mr. Boston?—A. 820 Tauromee Avenue, Kansas City, Kansas.

Q. What is your business, Mr. Boston?—A. I am a truck driver, Byers Transportation.

Q. And how long have you been with Byers Transportation?—A. A little over four years.

Q. Are you a member of Local 41?—A. Yes, sir.

Q. And how long have you been a member of Local 41?—A. Continuous?

Q. Yes, sir.—A. Well, I transferred out of there, I think it was '44.

Q. When did you first join 41?—A. 1936, I think it was.

Q. And how long did you remain continuously thereafter?—A. Until I went to the army, that was in '43, I think.

Q. And what did you do then with respect to the union?—A. I took a withdrawal card.

Q. Took a withdrawal card. Now, when did you go back into the union?—A. Sometime in '44, early part of '44.

Q. And was it Local 41 that you rejoined?—A. Yes.

83 Q. Then how long did you remain in '41?—A. Not very long. I transferred.

Trial Examiner BEAN. '41 or '44?

Mr. SCOTT. '44.

By Mr. SCOTT:

Q. You went back in after you left the army, you went back in '43 and remained until '44, is that right?—A. No; I went out in '43 to the army and come back early in '44 and then I went to Seattle, Washington, and was transferred into 174.

Q. Is that the same type of a local as 41?—A. Yes.

Q. How long did you stay in 174?—A. I just don't remember, but it wasn't very long.

Q. Then what happened?—A. I came back to 41.

Q. Came back to Kansas City?—A. Yes.

Q. And would you say then that you have been in 41 continuously since the last time, since about 1945?—A. Yes.

Q. And when did you go to work for Byers the last time?—A. I think it was '46.

Q. 1946?—A. Yes.

Q. And have been with them continuously since that time?—A. Yes.

Q. Are you still a member of 41?—A. Yes.

Q. Have you ever lost your membership since 1946?—A. No.

Q. Now, what is the highest rank in seniority that you obtained since you have been with Byers Transportation Company?—A. You mean what position?

Q. On the list; yes.—A. Well, I am pretty sure it was 18.

Q. 18. And when were you 18th on the list?—A. Last day of June.

Q. Last day of June. Now, then, from the first day of July, it would be the first day of July, when were you reduced in seniority?—A. Well, you are automatically reduced when you don't pay your dues.

84 Q. Tell what happened in regard to paying your dues?—

A. If you fail to pay your dues on the second day of the following month you automatically lose your seniority.

Q. Well, did you fail to pay your dues?—A. I failed to pay my dues.

Q. For what month?—A. June 1950.

Q. And when did you pay your June 1950 dues?—A. I think it was the fifth day of July.

Q. And what other months did you pay for them?—A. What months did I pay for then?

Q. Yes. Do you have a receipt there with you?—A. I have a stamp. Paid June and July.

Q. You paid your June and July 1950 dues on July 5, 1950?—A. Yes.

Q. Now, when you paid your June dues on July 5, 1950, were those June dues delinquent?—A. Yes.

Q. How long had they been delinquent?—A. Since the first day of July. As far as that goes they were delinquent from the first day of June. They are due on the first day of June. You don't lose anything if they are not paid until the first day of July.

Q. Do your by-laws provide that you can pay your dues any time during the month they are due up to and including the first day of the following month? For instance. Let me withdraw that question. When was the last time that you had under the bylaws to pay your June 1950 dues?—A. Without penalty?

Q. Without penalty.—A. First day of July.

Q. 1950?—A. 1950.

Q. So when you paid your dues on July 5, 1950, for June, you were then four days past the day when the penalty started?—A. That's right.

Q. Now, what penalty did you receive for failing to pay your June dues?—A. Reducing to the bottom of the list.

85 Q. You were reduced to the bottom of the list?—A. Yes.

Q. And what was your number then?—A. Fifty-four.

Q. You went from the 18th to the 54th on the seniority list?—A. Yes.

Q. What is your position on the seniority list now?—A. I don't know.

Trial Examiner BEAN. What?

A. I don't know.

By Trial Examiner BEAN:

Q. The last time you did know, what was your position?—A. Well, the last time that I paid any attention to it was when the new seniority list was put up. There has been, oh, I don't know. There was over a dozen below me now.

Q. Has any list been posted since you were posted as 54th?—A. No.

By Mr. SCOTT:

Q. Well, was that 54th position, was that the bottom position of the list?—A. Yes; the last name on the list.

Q. And why were you reduced to that position?—A. Because I didn't pay my June dues.

Q. Because you didn't pay your June dues by July 1, 1950?—A. Yes.

Trial Examiner BEAN. Off the record.

(Discussion off the record.)

Trial Examiner BEAN. Back on the record.

By Mr. SCOTT:

Q. Now, as a result of being reduced in seniority, what effect was there on your work?—A. Well, there wasn't much effect on it because business has been good.

Q. Did you lose any trips?—A. I lost, oh, a couple.

Q. And what was the value of those trips?—A. You mean what we get?

86 Q. What would you have got for making those trips?—A. I would have got \$28.05 for each one.

Q. So that you then lost \$56.10 in trips as a result of being reduced in seniority?—A. I would say that is about right. I wouldn't say exactly I had lost it because if business hadn't been as good as it was, I had lost the seniority and I would have been laid off.

Q. You couldn't have made those trips if you wanted to?—A. No; not those two.

Mr. SCOTT. I think Mr. Byers testified to this but I want to get this witness's answer.

By Mr. SCOTT:

Q. When lay-offs do occur down with the company, what men are selected first?—A. The bottom ones.

Q. At the bottom?—A. That's right.

Q. Now, in order for you to get back the seniority that you lost, what has to take place?—A. Time. You don't get back what you lost.

Q. Beg pardon?—A. You don't get it back.

Q. Is it permanently taken away from you?—A. Yes, sir.

Q. Were you told why you lost your seniority?—A. I knew. I didn't have to be told.

Q. Are you familiar with the bylaws?—A. Yes, sir; I think I am.

(Thereupon a document was marked as "General Counsel's Exhibit No. 3" for identification.)

Q. I am going to hand you what has been identified as General Counsel's Exhibit 3 and ask you to examine it and then tell what it is.—A. Bylaws, 41 bylaws.

Q. And were those bylaws in effect at the time you lost your seniority? A. Yes, sir.

Q. And I will call your attention to Section 45 on page 19.—A. I know about it.

87 Q. And is that the provision under which your seniority was taken away from you?—A. Yes, sir.

Mr. SCOTT. We would like to produce into the record General Counsel's Exhibit 3, bylaws of the Local Union No. 41.

Mr. MANNING. No objection.

Trial Examiner BEAN. Without objection it is admitted.

(The document heretofore marked "General Counsel's Exhibit No. 3" for identification was received in evidence.)

Mr. SCOTT. Cross-examination.

Cross-examination by Mr. MANNING:

Q. You are here under subpoena that was obtained by the General Counsel, aren't you?—A. Yes, sir.

Q. As a matter of fact, you have requested the regional director, Mr. Hugh Sperry, to permit you to withdraw the charge which you filed in this case, haven't you?—A. Yes, sir.

Q. And Mr. Sperry denied you that privilege?—A. Yes, sir.

Q. And you actually are testifying here against your own will, is that true?—A. In a manner speaking; yes.

Q. Now, the decision to withdraw the charge was one that you made yourself, wasn't it?—A. Yes, sir.

Q. No official or representative of the union itself threatened you or coerced you?—A. No, no. The only thing about the official of the union, I just merely asked him how I could go about withdrawing. I decided to withdraw the case and I called Frank McGuire, I think he belongs to the union of ours, and I called him and asked him how I go about withdrawing.

Q. Now, you remember, Frank, when Section 45 of the bylaws, which is this section with respect to forfeiting

(Continued on p. 71.)

General Counsel's Exhibit 3

- 88 BYLAWS OF OVER-THE-ROAD AND CITY TRANSFER DRIVERS,
HELPERS, DOCK MEN AND WAREHOUSEMEN LOCAL UNION
No. 41

AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, KANSAS
CITY, MISSOURI

- 89 Some pay their dues when due.
Some pay when overdue.
Some never due.

How do you due?

- 90 Bylaws of Over-the-Road and City Transfer Drivers,
Helpers, Dock Men and Warehousemen, Local Union No.
41 affiliated with International Brotherhood of Teamsters, Chauff-
eurs, Warehousemen and Helpers of America, Kansas City, Mis-
souri.

91

OBJECTS

To organize under one banner all workmen engaged in the craft, and to educate them to cooperate in every movement which tends to benefit the organization; to impress upon our membership, our employers, and the public that it is to the advantage of all concerned that workers be organized; the organization of our craft requires honest and intelligent membership, adapted to the business; we teach our membership the advantages, benefits and importance of their industrial position, and we endeavor to build up and perfect a labor organization in conformity with the highest standards of our American and Canadian citizenship; we seek to improve the industry and by increasing the efficiency of the service and by instilling confidence, good will and understanding between our membership and their employers, which will have the

- 92 effect of preventing unnecessary conflicts or serious misun-
derstandings between the membership and their employers,
and which will further encourage cooperation and fair deal-
ing with all employers so as to secure for our membership reason-
able hours, fair wages and improved working conditions.

ORGANIZATION

SECTION 1. This organization shall be known as the Over-the Road and City Transfer Driver, Helpers, Dockmen and Warehousemen, Local Union No. 41, A. F. of L. affiliate, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

SEC. 2. The officers of this Union shall consist of President, Vice-President, Recording Secretary, Secretary-Treasurer and three Trustees.

SEC. 3. All officers collecting or handling the Local Union's funds shall be bonded; premium to be paid for by Local Union No. 41.

DUTIES OF OFFICERS

SEC. 4. The President shall preside at all meetings of
93 this Local, appoint all committees not otherwise ordered,
and transact such other business as the Local may direct;
sign all orders on the Secretary-Treasurer authorized by the Local
Union. He shall see that the laws as laid down by the By-Laws
are enforced. Warden and Conductor to be appointed by the
Chair. The President shall call the meeting to order and in
case of the absence of the President, the Vice President shall
preside, in absence of both, the Recording Secretary shall perform
that duty, and the Local shall proceed to elect a Chairman, who
shall conduct the meeting until the arrival of the proper officers.

SEC. 5. The President and Business Representative shall be in
active service during the term of his office to transact such business
as needs his attention at all times; to look after the interests of the
Local and assume the duty of Business Agent. The Presi-
94 dent shall be a member (ex-officio) of all committees, and
shall be responsible for their actions.

SEC. 6. The Vice President shall assist in keeping order, and
in the absence of the President, preside at the meetings of the
Local. He shall assist the Warden and see that no one enters the
meeting without the pass-word. He shall give the pass-word to
members only, when requested to do so by the President or Secre-
tary-Treasurer.

SECRETARY-TREASURER

SEC. 7. Secretary-Treasurer, immediately upon taking the office
of Secretary-Treasurer shall procure a suitable surety bond, pre-
mium on said Bond to be paid for by Local Union No. 41, and a
copy of the same must be filed in the General Office at Indianapolis.

SEC. 8. Local Secretary-Treasurer shall deposit all moneys of
the Local Union in a reliable bank in the name of the Local Union
at least twice a month or oftener, if possible, as the Local
95 Union may designate from time to time.

SEC. 9. Local Secretary-Treasurer must pay all bills by
check, countersigned by the proper officials of the Local Union.

SEC. 10. Local Secretary-Treasurer must balance his day book
and cash book monthly, showing the exact balance on hand with
the Local Union on the first day of the coming month, and have his
bank book balanced on the last day of the month or get a bank

statement from the bank on the last day of the month, showing the exact amount of money in the bank, so that the Trustees of the organization may verify the bank statement and the books of the Local Union at any time.

SEC. 11. Local Secretary-Treasurer must keep the International bookkeeping system, consisting of a day book, ledger and cash book.

SEC. 12. Local Secretary-Treasurer must receive a
96 voucher properly signed by the President and Recording Secretary for all bills that are ordered paid by the Local Union.

SEC. 13. Local Secretary-Treasurer must keep the applications of all new members initiated filed monthly.

SEC. 14. Local Secretary-Treasurer must keep all receipted bills with a voucher of the Local Union attached to same and filed monthly.

SEC. 15. Local Secretary-Treasurer must attach all return checks to the stub in the check book of the Local Union each month, when he receives his cancelled checks from the bank.

SEC. 16. Local Secretary-Treasurer shall report to the General Secretary-Treasurer on the first day of each month, the number of men that are being carried on the books of the Local Union as good standing members, and all new members who have been initiated during the previous month and all members who have paid up their back dues and again become in good standing. This
97 report must be made on the monthly report blank that is issued by the General Secretary-Treasurer.

SEC. 17. Local Secretary-Treasurer must pay to the General Secretary-Treasurer thirty (30) cents out of every due collected by the Local Union.

SEC. 18. Local Secretary-Treasurer must report the names and addresses of all members in good standing in the Local Union.

SEC. 19. Local Secretary-Treasurer cannot and must not carry any men on their books as members of the organization and mark them exempt from paying dues.

SEC. 20. Local Secretary-Treasurer on the monthly audit of the Trustees must see that the Trustees sign his books, if the Trustees of the Local Union have found them correct and the bank balance verified with the balance on the books of the Local Union.

SEC. 21. Local Secretary-Treasurer must see that the
98 Chairman of the Trustees forwards a copy of the monthly audit, properly signed by the Trustees, showing the balance on hand with the Local Union to the General Secretary-Treasurer.

SEC. 22. When the term of office of a Local Secretary-Treasurer expires and his successor is elected to take his place, he must see that his successor is properly bonded and a copy of the bond sent

to the General Office before he transfers the funds of the organization to his successor in office.

EMPLOYMENT OF CLERICAL HELP

SEC. 23. The President and Secretary-Treasurer shall have the power to employ such clerical assistance as may, from time to time, be necessary. Such help shall be paid reasonable salaries from the general fund, all of which shall be subject to the approval of the Executive Board of Local Union No. 41.

RECORDING SECRETARY

99 SEC. 24. The Recording Secretary shall keep correct, full and impartial account of the proceedings of each meeting of the Union, and must be read at each regular meeting of the Local for action; see that all applications for membership are properly filled out; notify candidates when they have been elected for membership; sign all orders on the Secretary-Treasurer, and perform such other duties as the Local Union or Constitution may direct. He shall work in harmony with the Secretary-Treasurer.

WARDEN

SEC. 25. The Warden shall have charge of the inner door and shall not admit any member who is more than three (3) months in arrears, unless authorized to do so by the Secretary-Treasurer, and shall not allow any member under the influence of liquor to enter the hall.

CONDUCTOR

100 SEC. 26. The Conductor shall attend all meetings and assist the President in keeping order and take up the password at each meeting.

TRUSTEES

SEC. 27. The Trustees shall be custodians of all property of this Union; they shall audit all books and accounts at the expiration of each month and make a written report at the next regular meeting. The Chairman of Trustees must see that a copy of the monthly report is signed, showing the balance on hand with this Local and sent to the General Secretary-Treasurer and see that the Local Secretary-Treasurer is properly bonded.

BUSINESS REPRESENTATIVE

SEC. 28. The Business Representative shall act as Organizer and shall endeavor to settle all difficulties between Employer and the Union, he shall transact all business outside the business office of the Union. He shall be the recognized representative of
101 the Union to the Employers and the General Public. As Organizer he shall assist under instructions of Secretary-Treasurer in collection of dues and assessments, receipt for all money collected in discharge of his duties, paying over same to the Secretary-Treasurer without delay, and such other duties as may from time to time be requested from him by the Local Union.

SALARIES OF OFFICERS

SEC. 29. The salaries of all officers of the Union shall be set by the Local Union.

MEMBERSHIP

SEC. 30. (a) Any person 18 years or over, of good moral character, employed in the craft or the various departments over which this Local Union No. 41 has jurisdiction, shall be eligible to membership in this organization. Provided, that hereafter no person shall be eligible for membership in this organization who
102 has not declared his intention to become a citizen of the United States, if a resident of the United States, or of Canada, if a resident of Canada, or who, having declared such intention, has permitted same to lapse.

(b) No person shall be entitled to membership in this Organization who owns or operates more than one team or vehicle. The General Executive Board, when they deem it advisable or for the best interest of our International Union and upon the recommendation of the Local, may allow a man to own more than one team or vehicle and hold membership, provided that he hires or employs none but members of our International Union and that he drives a vehicle himself and pays the driver the prevailing rate of wages in the locality.

(c) Any man owning and operating but one team or automobile is entitled to membership in our Organization. This will also permit the owner of one team or automobile to hire a helper
103 in case he is sick or disabled or working for his Local Union or for the International Union. He may get a substitute to work for him, but the substitute must be a member of

the International Organization. No individual owner or vendor shall be permitted to vote on a strike involving journeymen, nor shall they be permitted to vote on wages and working conditions, nor shall they be eligible for office of Local Union No. 41.

SEC. 31. The Initiation Fee shall be not less than five (\$5.00) dollars.

SEC. 32. Any person who desires to become a member of the Over-the-Road and City Transfers Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, must fill out the regular application blank and sign his name to it and have the same to be approved by the body at a regular meeting as a voucher for the applicant's fitness to become a member and after being passed upon it shall be filed in the Secretary-Treasurer's office for future reference.

104 SEC. 33. The full Initiation Fee shall be not less than five (\$5.00) dollars and must be paid in full before the application will be received. Upon payment of same, he shall receive a monthly button, if rejected same to be returned to the Local Union.

SEC. 34. All applicants must pay monthly dues of two dollars and fifty cents (\$2.50) beginning the month following the date of application.

SEC. 35. Any applicant who has been rejected shall have his money refunded.

SEC. 36. Any person who has been expelled, suspended or rejected in any Local Union shall not be eligible to membership in this Local Union, except by consent of Local Union of which he has been a member or from which he has been rejected.

SEC. 37. When a applicant has been objected to, the reason for such action shall be investigated by the Executive Board, and if the reason for such objection is found to be good, he shall
105 not be eligible to membership for a period of three months from date of such rejection.

SEC. 38. Transfer Cards must be renewed after thirty (30) days, unless deposited with the Local Union nearest to where the member is at work.

SEC. 39. Any member of the International Union leaving our employment or going to work at another craft or occupation, must be given an honorable withdrawal card and cannot remain a member of the International Union; but before a withdrawal card is issued the individual must comply with all rules and laws of the Local and International Union.

SEC. 40. Any ex-member out on a withdrawal card and desiring to return to membership must first deposit his withdrawal card with the Local Union by which it was issued; and upon the withdrawal card being accepted, the member shall be subject to the

rules and laws of the Local Union. This Card Must Be Renewed by the Individual Once Every Twelve Months.

106 SEC. 41. Local Unions must not accept withdrawal cards if the member has committed any offense while out on withdrawal card which would be injurious to union principles. Also if the Local Union is paying benefits and the member has fallen into bad health or is liable to become a charge against the Local or International Union, acceptance of the withdrawal card can be refused by the Local Union.

DUES AND ASSESSMENTS

SEC. 42. Dues of the Local Union No. 41 shall be not less than two dollars and fifty cents (\$2.50) per month, payable on or before the first day of each month. To be in continuous good standing, a member must pay his dues on or before the first of the month, in advance.

SEC. 43. Local Union No. 41 may make such fines and assessments upon its members as the interests of the Union shall demand, and all assessments and fines must be paid before dues are accepted.

107 SEC. 44. All members who are three (3) months in arrears for dues shall stand suspended and deprived of all rights, privileges and membership, but can be reinstated upon payment of amount of dues. Any member failing to be reinstated during the fourth (4th) month shall pay a reinstatement fee of two (\$2.00) dollars in addition to amount due. A suspended member shall not be eligible to reinstatement or become a member of any other Teamsters' Local Union before paying all back dues and assessments to Local Union No. 41. It shall be understood that this Local Union shall not waive jurisdiction over any member, his name shall remain on the books of this Organization until such time as he is released, either by Withdrawal Card, Transfer Card, expulsion or death.

SEC. 45. Any member, under contract, one month in arrears for dues shall forfeit all seniority rights.

108 (a) Clarification of the above paragraph: On the second day of the second month a member becomes in arrears with his dues.

SEC. 46. The Executive Board shall have the power to call a special meeting or transact all necessary business of the Union between meetings and to them shall be referred all matters not otherwise disposed of, they shall decide all disputed questions in reference to the Constitution and Bylaws and perform such other duties as this Local Union may require.

MEETINGS

SEC. 47. The regular meetings of Local Union No. 41 shall be the first and third Wednesday at 8 p. m., and the second Sunday at 10 a. m. of each month. All members are compelled to attend at least one meeting per month or shall be fined one (\$1) dollar, to be paid before dues are accepted.

109 SEC. 48. A Special Meeting of the Union can be called by any ten (10) members, sanctioned by the President, but no business shall be transacted except that named in the call; all members shall be notified.

SEC. 49. A quorum shall consist of seven (7) members in good standing.

SEC. 50. Nominations of Officers shall take place at the first meeting in December and the election at the last meeting in December. To be eligible for office member must be in continuous good standing for two (2) years. The Officers elect may be installed at the same meeting at which they are elected. The Australian Ballot shall govern all elections. All candidates for office must be present when nominated. The terms for President, Vice-President, Secretary-Treasurer and Recording Secretary shall be five (5) years.

SEC. 51. The Business Representative of Local Union No. 110 41 shall be elected the same as any other officer; but can be removed at any time for incompetency, dishonesty or neglect of duty, or if there are no funds in the Local Union to pay his salary. He shall be given a trial, the same as any other officer.

SEC. 52. The Trustees shall be elected in the following manner: One for three (3) years, one for two (2) years, and one for one (1) year, thereafter the one Trustee shall be elected each year for a term of three years.

COMMITTEES

SEC. 53. Special Committees may be appointed from time to time, as deemed necessary, who shall act promptly on matters referred to them and who may be discharged at the will of the Union.

SEC. 54. All Committees shall perform the duties assigned them within the time specified and report such results back to the Union in writing.

111

RULES

SEC. 55. All disputes between Local Union No. 41 and the Employers may be settled by negotiations if possible. Upon failure to settle any grievance or dispute by negotiating, this Local Union shall take a secret ballot upon the question as to

whether or not a strike shall be ordered. A majority of two-thirds of the members present at the meeting to decide.

SEC. 56. No raffle tickets to be sold or collections will be permitted in the hall during the Local sessions.

SEC. 57. When charges are preferred against any member of this Local, the member preferring same shall put charges in writing, the same to be referred to the Executive Board without debate. Any member shall have the right to an appeal to the Joint Council if he considers the decision of the Local Executive Board to be unjust; said appeal must be taken up not later than the
112 second meeting of the Council, and must be in writing, party taking appeal to hold himself in readiness to appear before the Joint Council on their order.

SEC. 58. It is compulsory for all members to carry their books with them at all times while working.

SEC. 59. The International Brotherhood reserves the right to cancel Withdrawal Cards, and should any person in legal possession of one violate the Constitution or antagonize the principles of Trade Unionists, he shall be suspended from the Brotherhood.

SEC. 60. It shall be the duty of every member of this Local to show due respect to and sustain its officers in the proper discharge of their duties.

SEC. 61. All members of this Union shall at all times wear his button in plain sight so it can be seen by any one.

SEC. 62. Any members working for less than the minimum rate of wages recognized by this Union under contract or specified work, shall be fined not less than twenty-five (\$25) dollars for the first offense and upon the second violation of this
113 rule shall be expelled from the Union.

SEC. 63. Religious or political discussions are strictly prohibited.

SEC. 64. Should any officer of this Local Union fail to answer the roll call for three consecutive meetings, unless he can show a just cause for being absent, his office shall be declared vacant by the President, and an election to fill said vacancy will take place at the following meeting.

SEC. 65. All business done in this Local shall be strictly secret to all outside the local.

SEC. 66. All members shall acquaint themselves with all rules as laid down by these Bylaws, as ignorance of said rule shall constitute no excuse.

SEC. 67. No member of this Union shall try to disrupt the Union or injure it in any shape, form or manner, or persuade
114 members to drop out of the Union, are subject to fine or suspension, with proven guilt.

SEC. 68. No member shall be entitled to vote unless in good standing on day of election.

SEC. 69. These laws to be in force as soon as adopted.

SEC. 70. All amendments must be in writing and read at the meetings before adopted.

RULES GOVERNING DEATH DONATIONS

This Death Fund is purely voluntary. The benefits extended to the members of Local Union 41 are a pure and voluntary donation by the Local Union, provided that the member has complied with the following rules governing same. But under no consideration should this article be construed to mean that a member is paying any dues directly into this fund, or that any part of his dues are taken as payment of premium for this donation. All members' death certificates for death will come before the Local Executive Board for passage for approval. In the event that technicalities arise and the Local Executive Board does not deem it advisable to approve a donation, same will be taken up with the Local Union for their approval who will decide by a two-thirds majority vote of the members present, and this action will be final and binding. The Local Union and the Executive Board will be governed by the following rules:

SECTION 1. A Death Donation shall be donated to all regular dues-paying members of Local Union No. 41, after holding membership in Local Union No. 41, for six (6) consecutive months after becoming a member by paying initiation fee, transfer card, returning on a withdrawal card or reinstatement.

SEC. 2. A member taken sick or dying owing dues for the previous month shall be debarred from all donations.

SEC. 3. If a member is not paid up at the time of sickness or death he cannot then pay up and be entitled to donations.

SEC. 4. In case of death the office must be notified at once, either in person or in writing, and a death certificate must be furnished to Local Union No. 41.

SEC. 5. At the death of a member who has been a dues-paying member for six months (inclusive) from the time of initiation, depositing Withdrawal Card, transferring in, or is reinstated and is in good standing at the time of death the Local Union shall make a donation of \$300.

SEC. 6. If a death donation is to be paid, by the Local Union, it shall be paid to the widow of the deceased; if there shall be no widow, of deceased, then the said donation shall be paid in equal shares to the surviving children of the deceased, if any; if the deceased shall leave neither a widow nor children, then the said donation shall be used by the Local Union to pay the funeral expenses of the deceased; provided, however, that the Local Union shall not pay any of the funeral expenses which are

in excess of the amount of the donation payable as given in Section 5.

SEC. 7. At the death of any member of Local Union No. 41 or any member of the immediate family of a member a floral offering to cost \$10 shall be donated by Local Union No. 41.

SEC. 8. The Secretary-Treasurer, upon satisfactory information and proof of a member's death, and a signed death certificate shall present the Local's donation in check form, signed by the President and Secretary-Treasurer.

SEC. 9. All donations to be made in check form to beneficiaries by Secretary-Treasurer.

SEC. 10. The Secretary-Treasurer must keep all death certificates and file same for future reference.

SEC. 11. In the event of an epidemic this Organization reserves the right to stop making death donations.

118 SEC. 12. These By-Laws cannot be suspended, added to or dispensed with unless by two-thirds majority vote of the entire membership in good standing.

Any rules herein not mentioned or provided for shall be governed by Roberts' Rules of Order.

RULES OF ORDER

SECTION 1. The President, while presiding shall state every question coming before the Union before suffering debate thereon, and immediately before putting it to a vote shall ask, "Is the Union ready for the question?" Should no member arise to speak and the Union indicates their readiness, he shall rise to put the question. After he has risen no member shall be permitted to speak upon it.

SEC. 2. When the decision of the President is appealed from, he shall state his decision and the reason therefor from the Chair. The appealing party shall then briefly state his objection. The question shall be put thus: "Shall the decision of the Chair stand as the judgment of the Union?"

SEC. 3. Every member, while speaking, shall adhere to the question under debate as well as any reflection on any member thereof.

SEC. 4. Any member while speaking, being called to order by another, at the request of the Chair, shall cease speaking and be seated until the question of order is determined.

SEC. 5. No member shall speak more than once on the same question until all members wishing to speak shall have an opportunity to do so, nor more than five minutes at one time.

SEC. 6. No member shall enter or leave the hall during the reading of the minutes, admission of new members, installation of

officers or the taking of a question by yeas or nays, and no member shall be allowed to leave the hall without permission of the presiding officer.

120 SEC. 7. When a motion has been declared carried or lost by acclamation, any member, before the Union proceeds to other business, may call for an account, but the yeas and nays cannot be called unless demand before the President rises to put the questions.

SEC. 8. The yeas and nays may be called by two members, and upon the assent of one-third of the members present shall be so taken.

SEC. 9. A motion to adjourn having been put and lost shall not be in order again, provided, there is further business before the Union, until fifteen (15) minutes have elapsed.

SEC. 10. All other proceedings in debate not herein provided for to be guided by Roberts' Rules of Order. One tap of the gavel shall call to order, three taps to arise.

ADVICE TO STEWARDS

SECTION 1. Stewards shall examine all working cards once a month, and examine all cards when new men are employed.

121 Any member failing to respect the Steward of any barn in discharge of their duty shall be reported for his action, and such member shall be subject to a fine as ordered by the Executive Board.

SEC. 2. Become acquainted with the laws of the I. B. of T., C., W. and H. of A. and your Local Union.

SEC. 3. Become acquainted with the agreement of your Local and Employers.

SEC. 4. Examine the due books of every member working in the barn in which you are Steward not later than ten (10) days prior to the first of each month.

SEC. 5. When a new man is employed ask him for his due book. If he is not a member of Local Union No. 41, I. B. of T., C., W. and H. of A., or he is one month in arrears (and a member of Local Union No. 41, I. B. of T., C., W. and H. of A., in good standing can be had), object to him going to work.

122 SEC. 6. When a member has a complaint he must report to the Steward, whose duty it is to take the member to the Employer, hear both sides of the case, and if the Employer is right tell the member so; if he is not satisfied, send him to the Officials of the Local. If the Employer refuses to comply with the Steward's decision, notify the Officials at once.

SEC. 7. Stewards must not call a strike unless authorized by the Local through its Officers.

SEC. 8. Stewards shall use all their influence to prevent a strike until the Officers have had a chance to adjust the difference.

SEC. 9. See that all members have a copy of the Bylaws.

SEC. 10. See that the Local Secretary-Treasurer has the correct address of each member employed in the stable or garage of which you are Steward.

Adopted by Over-the-Road and City Transfer Drivers,
123 Helpers, Dockmen and Warehousemen, Local Union No. 41,
I. B. of T., C., W. and H. of America.

Bylaw Committee:

W. D. BELT,
JIMMIE HARRIS,
A. D. SMITHERS,
MATT GARWOOD,
JOHN H. ROPP.

Approved by Membership Meetings on October 15th, 1941,
November 9th, 1941, and November 19th, 1941.

Approved by the Joint Council No. 56 this 12th day of
November:

BYLAW COMMITTEE,
By R. R. PRICE,
Recording Secretary.

Approved November 28th, 1941, by International Brotherhood
of Teamsters, Chauffeurs, Warehousemen and Helpers.

THOMAS E. FLYNN,
Acting for General President.

125

THINGS TO BE REMEMBERED

Regular meetings are first and third Wednesdays at 8 p. m. and
second Sunday at 10 a. m.

Dues are payable on or before the first of the month in advance.

Don't let your dues elapse and deprive you from your benefits.

Do not fail to take out Withdrawal Card when leaving craft.

(Continued from p. 58.)

126 seniority is concerned, do you remember when that went
into effect?—A. I remember it going into effect but I don't
remember the date.

Q. It has been several years, I mean four or five years?—A. I
would say it was five or six years, maybe a little bit longer.

Q. You were one of those who opposed the passage of that,
weren't you?—A. Yes, sir.

Q. And this matter was taken up in three of the meetings of
the union and you, among others, contested and opposed that rule
but a majority of those who were present, of those members who

were present at those meetings, voted in favor of the rule?—A. Yes.

Q. Now you, of course, have been a member for many years, almost since the inception of this Local 41, haven't you?—A. Yes, sir.

Q. And you took the oath of membership?—A. Yes, sir.

Q. And agreed to be bound by its constitution and bylaws?—A. That's right.

Q. And do you want to be bound by the constitution and bylaws, isn't that true?—A. That's right.

Q. You have no intention and had no intention when you filed the charge in this case of refraining from any of your union activities?—A. No.

Q. Or refraining from any of the benefits or liabilities that attend membership in this union?—A. No. I thought I was trying to help them make a better union out of it.

Q. Your purpose in filing the charge was to try to get rid of this rule, isn't that true?—A. That is correct.

Q. And since the time that you filed the charge you have decided that the method or procedure that you used was incorrect and that you should go through the union itself to get this rule taken off the books, isn't that right?—A. Well, I finally made up my mind that it would be the best way.

127 Q. Yes. In other words, the thing to do to get rid of what you think is an obnoxious bylaw is to prevail on the rest of the members or a majority of them at least to vote the rule out of existence, isn't that correct?—A. Yes; that is correct.

Q. And so far as you are concerned, this matter that is before the Board here should be dropped and you allowed to proceed through your union and through the democratic processes of the union, isn't that true?—A. I asked for it to be dropped.

Q. You still consider yourself bound by the oath of obligation of the constitution and bylaws of the union?—A. Yes, sir.

Q. And you intend and want to be so bound?—A. Yes, sir.

Q. So the record may be clear on the point, you never saw me before this morning, did you?—A. I never saw you before to my knowledge.

Mr. MANNING. I believe that is all.

Redirect examination by Mr. SCOTT:

Q. Mr. Boston, when you lost your seniority you did not—was your membership in the union forfeited at that time?—A. No; I don't think it was.

Q. And has the union continued to accept dues from you since that time?—A. Yes.

Q. What was the last time you paid your dues?—A. In July, last time I paid them.

Q. Well, how are your dues collected now?—A. By what you call a check-off system.

Q. And are you paid for this month?—A. I am paid up for December.

Q. And the union has been receiving your dues?—A. I haven't got the stamp for December yet but they have already taken it out of my check.

128 Q. And you are not delinquent in dues for any months of this year or past year, are you?—A. I am paid up until the 31st day of December.

Mr. SCOTT. I think that is all.

Mr. MANNING. Nothing further.

Trial Examiner BEAN. Thank you, Mr. Boston.

Witness excused.

Mr. SCOTT. The General Counsel rests.

Mr. MANNING. Well, I move, Mr. Examiner, that the complaint be dismissed on the ground that the charging party has indicated that he desires to withdraw the charge and the complaint, that he feels bound by the oath of obligation of the constitution and bylaws of the respondent union and that he does not desire to refrain from any of his obligations and, on the second ground that the complaint has wholly failed to establish any violation of the National Labor Relations Act and in particular, the charges alleged, that is, violation of Sections 8 (b) (1) and 8 (b) (2) of the Act, and for the reason that assuming all the evidence of the General Counsel to be true, none of these acts established or constitute an unfair labor practice within the meaning of those sections in that they do not encourage or discourage membership in the labor organization and they are nondiscriminatory practices so far as the Act itself is concerned. If anything, they would discourage membership in the Act.

Trial Examiner BEAN. In the union, membership in the union.

Mr. MANNING. Membership in the union, right.

For this reason, there being no union shop clause in existence it is not incumbent upon employees to belong and therefore it would be to their advantage to fail to join and not be affected by the bylaws of the labor organization.

129 Trial Examiner BEAN. Do you wish to be heard, Mr. Scott?

Mr. SCOTT. No.

Trial Examiner BEAN. I will take the motion under consideration.

Mr. MANNING. I would like to examine Mr. Floyd Hayes.

FLOYD R. HAYES, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MANNING:

Q. Will you state your name?—A. Floyd R. Hayes.

Q. What is your position with the Teamsters Local 41?—A. Secretary-Treasurer.

Q. How long have you been in that position?—A. That particular position, ten years.

Q. How long have you been with the union?—A. Fourteen years.

Q. Since its beginning?—A. Since it was any size. It began in '33 but it didn't grow to any size until '36 when we came into it.

Q. You are familiar, of course, with the bylaws of the local union?—A. Yes.

Q. And in particular with respect to Section 45?—A. Yes.

Q. You are also familiar with the contract which is General Counsel's Exhibit No. 2?—A. Yes.

Q. Referred to as the Central States Area Agreement which covers, among other employees, those employed by Byers Transportation Company?—A. Yes; I am familiar. I was on the negotiating committee of that contract for ten years, since 1940.

130 Q. You helped negotiate the present agreement?—A. Right.

Q. Are you familiar with Section 1, Article 5, in particular the last sentence of that section which reads, "Any controversy over the seniority standing of any employee on this list shall be referred to the union for settlement"?—A. Yes; very familiar with it.

Q. Is it the understanding of the union representatives and yourself that the phrase, "Any controversy" includes instances where employees become delinquent or in arrears in their dues and forfeit their seniority rights under Section 45 of the bylaws?—A. Yes.

Q. Has that bylaw been in effect for several years?—A. This is the second bylaw. In other words, the bylaw has changed according to the international convention. They used to have it every five years and they changed it to four so I think it is going on the eighth or ninth year. It depends on when that law come out. I would have to look at the record.

By Trial Examiner BEAN:

Q. It was in effect last summer, last June?—A. Yes.

By Mr. MANNING:

Q. And you have been in contractual relationship with these employers during all the time that that bylaw has been in effect?—A. Yes.

Q. When I say you, of course I mean the union?—A. Right.

Q. And during all of that period of eight or nine years there have been many instances, have their not, when members have become in arrears in their dues and Section 45 of the bylaws as set-up?—A. Yes.

Q. And during all of that time the employers, carriers, interpreted the contract as you have, that is, in such instances or included in the phrase, "any controversy" mentioned in Section 1 of Article 5?—A. Yes; that is right.

131 Q. Was that discussed in your negotiations of that section of Article 5 when it first went into the contract?—A. Yes, in the discussion where they set it up to start with and they named two or three things how your seniority can be broken. And then over the contract we negotiated on a wide scale and have taken in 12 states in contingency territory, three hundred and some local unions. Then they added the last sentence to take care of the local situation. So far as we are concerned we are in complete agreement on the negotiations.

Q. When you say "we" you mean the employers locally in this region?—A. I mean the employers over the 12 states which these people are a part of. They have their own association. And in the back of the contract the entire negotiating committee were in complete agreement with the meaning of Article 5, Section 1.

By Mr. SCOTT:

Q. On page 43 is that a correct map of the employers that you cover with this?—A. The reason that map is in there, you see that blank line running up through the right-hand side, that is the Mississippi River. That little dotted line following out there on it is 40 miles from the Mississippi River and on the other side, east of this is known as the eastern division which carries a higher rate of pay. Otherwise the contract is in toto.

By Mr. MANNING:

Q. Now, of course, there are local unions covered by this contract who do not have a bylaw similar to Section 45?—A. Lots of them.

Q. There are others that do have that same bylaw?—A. Yes.

Q. And as I understand you, at the time this last sentence, Section 1 of Article 5 was negotiated and placed in the contract, it was to take care of the local situations where some local
132 might have a bylaw or some other situation might exist which affected the carriers and the men and the unions locally but did not affect the entire contract or entire group?—A. Yes; that's right. It's set out so that it can be setup and used locally.

Q. Applied on everybody?—A. In the 12 state and contiguous territory.

Q. In other words, any employee covered by this contract represented by one of these three hundred or so unions that you have spoken of, any such employee's seniority can be broken by discharge, voluntary quitting or more than two year lay-off, isn't that true?—A. Yes; that is right. If we all operated under the international constitution we didn't have individual bylaws, we would be estopped because they all have the same meaning.

Q. But since there were local problems such as this Section 45 of this local and other problems of other locals, this last sentence was added to Section 1?—A. That's right.

Q. And included, I understand you, among the local problems and among the situations which would constitute a controversy over the seniority standing, was this Section 45?—A. Right.

Q. Now, then, calling your attention to Section 4 of Article 5, which is on page 8 of the contract, the union, under that section or subparagraph (a), has the determination of seniority in the event of merger or purchase of lines?—A. That's right. The union or unions. It is also broad unless it can take in more than one.

Q. That is true.

Mr. MANNING. Will you mark that as "Respondent's Exhibit No. 1" for identification?

(Thereupon the document above referred to was marked "Respondent's Exhibit No. 1" for identification.)

133 By Mr. MANNING:

Q. Mr. Hayes, I hand you what has been marked for identification as Respondent's Exhibit No. 1 and ask you whether or not that is the constitution of the International Brotherhood of Teamsters?—A. Yes; that is the constitution and bylaws combined.

Mr. MANNING. I offer the exhibit in evidence.

Mr. SCOTT. No objection.

Trial Examiner BEAN. Without objection it is admitted.

(The document heretofore marked "Respondent's Exhibit No. 1" for identification was received in evidence.)

By Mr. MANNING:

Q. Does that constitution provide a method for members to process grievance against a local union within the structure of the international and its affiliated unions?—A. Yes.

Q. That procedure, as I understand, is set out in Article 18 and in particular Section 3 of Article 18 of the constitution?—A. That is correct.

Q. The constitution further provides in Section 13 of Article 18 that a member is to exhaust his remedies within the union it-

self before proceeding outside of the union to process a grievance?—A. Yes; that is correct.

Mr. MANNING. I believe that is all.

Mr. SCOTT. No cross-examination.

Mr. MANNING. Now, Mr. Examiner, as I stated on the off-the-record-discussion, the respondent union could produce virtually all of the carriers who operate locally here, in fact, probably produce all of them as witnesses and I had in mind producing four or five of such carriers for the purpose of testifying to their understanding and interpretation of Section 1 of Article 5 of the Central States Area Agreement, which is General Counsel's Exhibit No. 2, and if those witnesses did appear they would

Respondent's Exhibit 1

134

ARTICLE XVIII. TRIALS AND APPEALS

TRIALS OF LOCAL OFFICERS AND MEMBERS—PROCEDURE

SECTION 1 (a). A member or officer of a local union, charged with any offense constituting a violation of this Constitution, shall, unless otherwise provided in this Constitution, be tried by the Local Executive Board. If the member proposing the charges is a member of such Board then the president of the local shall appoint a disinterested member as a substitute.

(b) Whenever charges are preferred against any member or officer of a local, the charges shall be filed in writing in duplicate with the secretary of the local union, Joint Council or General Executive Board which is to try the case. No member or officer of a local shall be tried unless he or she shall be served by the secretary, personally or by registered mail, with a written copy of such charges specifying the nature of the offense of which he or she is accused. Thereupon, the accused shall be required to stand trial at the time and place designated, which shall not be less than ten (10) days from the date the charges are served upon the accused. The accused may appear in person, and with witnesses, to answer the charges preferred against him or her. He may select a member of his local to represent him in the presentation of his defense.

(c) If the charges, or any portion thereof, are sustained, then the trial body shall render judgment and impose disciplinary action as provided for in this Constitution. If the charges are not sustained, the same shall be dismissed and the accused re-
135 stored to full rights of membership or office in the local union.

(d) Upon filing of such charges, and if the same are of such magnitude and seriousness as to jeopardize the interests of the local or International, then and in that event the General President, if the matter is brought to his attention, may, if he deems it advisable, immediately suspend such member or officer from membership or office in the local union until a decision has been rendered in the case.

APPEALS OF LOCAL OFFICERS AND MEMBERS

SEC. 2. (a). In the event disciplinary action is taken against the accused, he or she may take an appeal from the decision of the Local Executive Board to the Executive Board of the Joint Council, if one exists, otherwise the appeal shall be taken to the General Executive Board. Appeals from decisions of the Executive Board of Joint Councils may be taken to the General Executive Board. In all matters involving officers of subordinate bodies and individ-

ual members there shall be no further appeal from the decision of the General Executive Board. Where elective officers of the International Union are involved, and as to all other matters not specifically excluded herein, appeals from decisions of the General Executive Board may be taken to the next Convention. All manner of appeals shall be taken within fifteen (15) days from the date the decision is mailed or otherwise transmitted to the interested parties.

(b) The appellant shall mail a written notice of such appeal to the secretary of the body to which the appeal is directed. No specific form or formality shall be required, except that such
136 notice shall clearly state an appeal is being taken from the particular decision rendered in the particular case. Pending any appeal, the decision appealed from shall remain in full force and effect. Appeals shall be heard either on the record made before the trial tribunal or by a retrial, in the discretion of the body hearing the appeal. Decisions on appeals shall be rendered as promptly as possible after the appeal has been heard. The date when an appeal will be considered by the appellate body may be fixed by it, but it shall proceed without unnecessary delay. Notice of the date when the appeal will be heard shall be served personally or by registered mail on the parties interested in the particular case, and such parties may, in the discretion of the appellate body, be accorded the right to appear before the appellate body and present argument on the case.

(c) If a member of the Executive Board of the Joint Council or of the General Executive Board is interested in the case as a party thereto, then the President of the Joint Council or the General President of the International, as the case may be, shall appoint a substitute.

(d) Failure of any interested party in any case to appear before any trial or appellate body at the time and place designated in the notice shall constitute a waiver of appearance and the trial shall proceed or the appeal heard regardless of the absence of such party.

(e) Any party to a case, regardless of whether such party is the accused or not, being aggrieved of a decision rendered in the case shall be entitled to the same rights of appeal as are hereinbefore provided for accused.

137 TRIALS AND APPEALS OF LOCAL UNIONS, OTHER SUBORDINATE BODIES, AND ELECTIVE INTERNATIONAL OFFICERS

SEC. 3. (a) Whenever charges are preferred against a local union or against a Joint Council, or other subordinate body, such charges shall be filed in writing in duplicate with the secretary of

the trial body, and shall be served personally or by registered mail on the secretary-treasurer of the local union or the Joint Council or other subordinate body so charged. If the charges are against the local union the trial shall be by the Executive Board of the Joint Council. If the charges are against a Joint Council or other subordinate body the trial shall be before the General Executive Board.

(b) A local shall be accorded thirty (30) days' time in which to appear for trial and submit its defense. In the case of a Joint Council or other subordinate body the time of trial shall be fixed by the General Executive Board.

(c) In the matter of appeals from decisions affecting local unions not including decisions involving officers or individuals, the same shall be taken to the General Executive Board, and from it to the Convention. In the matter of appeals from decisions affecting Joint Councils, or other subordinate bodies, not including decisions involving officers or members thereof, the same shall be taken to the Convention. In all other respects procedure on appeals shall be the same as provided for in Section 2, this Article.

(d) Trial of elective International officers shall be before the General Executive Board at such time and place as fixed by the General Executive Board. The officer charged shall be found guilty only on a majority vote of the entire General Executive Board. Appeals by such General Officers from decisions of the General Executive Board shall be to the Convention.

(e) Emergency powers provided for in Section 9, this Article, shall apply with the same force and effect to local unions and Joint Councils and other subordinate bodies.

ORIGINAL JURISDICTION OF GENERAL EXECUTIVE BOARD TO TRY OFFENSES AGAINST INTERNATIONAL UNION

SEC. 4 (a). The General Executive Board shall have jurisdiction to try individual members, local unions, Joint Councils or other subordinate bodies, or International Officers for all offenses committed against the officers of the International Organization or the International Organization.

(b) Charges shall be filed in duplicate in writing with the General Secretary-Treasurer or the General President. A copy of the charges shall be served personally or by registered mail upon the accused, together with notice of the time and place of trial.

(c) If the accused are unable to be present at the meeting of the Board, they may present their case in writing.

GROUNDS FOR CHARGES AGAINST MEMBERS, LOCALS, JOINT COUNCILS
AND OFFICERS

SEC. 5 (a). The basis for charges against members, local unions, Joint Councils or officers, for which he, she or it shall stand trial, shall, among other things, consist of the following:

- (1) Violation of any specific provision of the Constitution.
- (2) Violation of the oath of loyalty to the local and the International.
- 139 (3) Violation of the oath of office.
- (4) Gross disloyalty, or conduct unbecoming a member.
- (5) If an officer, gross inefficiency which shall hinder and impair the interests of the local or of the International.
- (6) Misappropriation.
- (7) Secession, or fostering the same.
- (8) Abuse of fellow members and officers by written or oral communication.
- (9) Abuse of fellow members or officers in the meeting hall.
- (10) Activities which tend to bring the local or the International into disrepute.
- (11) Disobedience to the regulations, rules, mandates and decrees of the local or of the officers of the International.

(b) And for such other acts and conduct which shall be considered inconsistent with the duties, obligations and fealty of a member of a trade union, and for violation of sound trade union principles.

SPECIFIC OFFENSES

SEC. 6. Any member who (1) knowingly goes to work or remains in the employment of any person, firm or corporation, whose men are on strike or locked out, unless he has permission of the International, the Joint Council or his local union, may be tried by the Executive Board of his local union, or (2) knowingly gives or attempts to give directly or indirectly, any information to any employer on an unfair list or whose men are on strike or locked out, or whose men are trying to secure an agreement or an improvement in their working conditions or whose men are trying to prevent an increase in hours of labor or a decrease in wages, for the purpose of assisting such employer, or for any gain or
140 promise of gain, or (3) knowingly goes to work or remains in the employment of any person, firm or corporation on an unfair list of the International without permission from the International Brotherhood, the Joint Council or his local union, may be tried in the manner provided for the trial of other offenses.

REFUSAL TO RETURN BOOKS

SEC. 7. Any member who (1) wrongfully takes or retains any money, books, papers or any other property belonging to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, any Joint Council or local union; or (2) who mutilates, erases, destroys or in any way injures any books, bills, receipts, vouchers, or other property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, any Joint Council or local union, may be tried in the manner provided for the trial of other offenses.

DECISIONS AND PENALTIES

SEC. 8 (a). Decisions and penalties imposed upon the persons, officers, Locals, Joint Councils or other subordinate bodies found guilty of charges may consist of reprimands, fines, suspensions, expulsions, revocations, denial to hold any office permanently or for a fixed period or commands to do or perform, or refrain from doing or performing, specified acts. If the penalty is by way of fine then the same must be paid, pending an appeal if one is taken unless the General President waives the same, a local union ordered to reinstate a member or perform an act other than the payment of a fine must comply therewith as a condition precedent to taking an appeal unless the General President or the General Executive Board suspends such order pending the appeal. If the fine
141 is against a member or officer of a local union, assessed by the local union, it shall be paid into the Treasury of the local union. If a fine is assessed against a Local by a Joint Council the payment shall be to the Treasury of the Joint Council.

(b) If the fine is assessed where the General Executive Board has original jurisdiction, it shall be paid to the Treasury of the International.

(c) When such penalty consists only of a fine and an appeal is taken, such fine shall be deposited as above provided; thereupon such member, officer or Local shall be permitted to continue in the Union with full rights and privileges in accordance with the laws of the International. If on appeal the decision is reversed and the fine disallowed, then the same shall be returned to the party depositing the same. Whenever a decision is handed down by any trial or appellate body and an appeal is taken, such decision shall stand and remain in full force and effect until reversed by a higher body.

(d) In the event of noncompliance with the decision handed down by a trial or appellate body, the member, officer, local, or Joint Council shall stand suspended from all privileges of the International Brotherhood until the provisions of the decision

have been complied with. If, however, the decision carries with it an order of expulsion, then such order of expulsion shall immediately take effect.

(e) Any member or local that is tried by the General Executive Board cannot be tried for the same offense by a local or Joint Council.

(f) The General Executive Board may send a case back to the Joint Council, the local union, or other hearing body or officer for further hearing, production of additional testimony, or for further consideration with or without such further hearing.

142 EMERGENCY POWER IN GENERAL PRESIDENT TO CONDUCT A TRIAL WHEN WELFARE OF ORGANIZATION DEMANDS

SEC. 9. (a). Whenever charges involving a member or members, officer or officers, local union or Joint Council create a situation imminently dangerous to the welfare of a local union, Joint Council, or the International, the General President is empowered, in his discretion, to assume original jurisdiction in such matter, regardless of the fact that charges have been filed with another body and are pending. Under such circumstances, the General President may hold a hearing upon giving not less than forty-eight (48) hours notice to the persons charged to appear before him at a place and time designated by him. He may then proceed to hear and try the matter and render judgment in accordance with the fact and circumstances presented to him. When the General President has so acted, an appeal shall lie from his decision to the General Executive Board, and from the General Executive Board to the Convention in the same manner as is provided for appeals in other cases. Pending appeal from the General President's action, his decision shall stand and be enforced.

(b) When the General President deems it necessary to exercise the foregoing emergency power, he may deputize a representative to act for him in such matter. Such representative shall have the same powers as the General President as herein provided; however, when a trial shall be conducted by a representative of the General President, such representative shall make his recommendations to the General President, orally or in writing, and the decision in the case shall be made by the General President himself.

143 CHARGES NOT PREFERRED IN GOOD FAITH

SEC. 10. If charges are preferred against members or officers of local unions and such charges are not sustained, and the trial body is convinced that the same were not brought in good faith or were actuated by malice, the trial body or the appellate body may

impose such penalty by the way of punishment as in its judgment is deemed proper under the circumstances.

REFUSAL OF LOCAL TO TRY MEMBER

SEC. 11. Any local union refusing to try its members when charges have been preferred by another local union, for any cause whatsoever, the local union preferring the charges may then bring the charge before the Executive Board of the Joint Council, where one exists, for trial and decision in the same manner as provided for the conduct of other trials before the Local Executive Board. If no Joint Council exists, then the matter shall come within the jurisdiction of the General Executive Board.

REVOCATION OF MEMBERSHIP ON BEING FOUND GUILTY OF CRIME

SEC. 12. (a). When a member is found guilty of the commission of a crime or serious wrongdoing, or pleads guilty to the commission of a crime or serious wrongdoing, against the local union or against the community, and which crime or act of serious wrongdoing tends to bring dishonor upon the local union or the International Organization, it shall be the duty of the local union to proceed to revoke the membership of such member. Likewise, whenever a member of a local union has engaged in what is commonly termed racketeering, and he is found guilty thereof, 144 thereby bringing dishonor upon the local union or upon the International Organization, it shall be the duty of the local union to proceed in the manner provided in Article XVIII, Sec. 1, to revoke the membership of such member.

(b) Under the circumstances referred to in the foregoing paragraph, the secretary-treasurer of the local union shall refuse to accept dues from any person so removed from membership. It shall be mandatory upon the Local Executive Board to order the name of such member stricken from the rolls and to notify all local unions in the district, the Joint Council and the International, of its action and the cause therefor.

(c) In the event a local union fails to carry out the foregoing provision, then the General President, when the matter is brought to his attention, shall have the power, in his discretion, to proceed to revoke or order the revocation of the membership of such member.

(d) Any individual whose membership is hereafter revoked in accordance with the provisions of this section may subsequently be reinstated to membership; such reinstatement shall be subject to the approval of the local of which he was a member, the involved Joint Council, and the General Executive Board.

EXHAUSTION OF REMEDIES

SEC. 13 (a). Every member or officer of a local union, or other subordinate bodies or General Officer of the International, against whom charges have been preferred and disciplinary action taken as a result thereof, or against whom adverse rulings or decisions have been rendered, shall be obliged to exhaust all remedies provided for in this Constitution and by the International before resorting to any other court or tribunal.

145 (b) Where a member, local union or other subordinate body, before or following exhaustion of all remedies provided for within the International Union, resorts to a court of law and loses his or its cause therein, all costs and expenses incurred by the International Union shall be assessed against such individual, local union or other subordinate body, in the nature of a fine, subject to all penalties applicable where fines remain unpaid.

Where such court action is by an individual or by a local union or other subordinate body against a local union or other subordinate body, the foregoing provision in respect to the payment of costs and expenses shall be applicable in favor of the local union or other subordinate body proceeded against in court.

ARTICLE XIX. DISSOLUTION

SECTION 1. No local union can dissolve while there are seven (7) dissenting members; no Joint Council can dissolve while there are two (2) dissenting local unions; nor can this International dissolve while there are seven (7) dissenting locals.

ARTICLE XX. LABOR DAY

SECTION 1. We recognize the first Monday in September as Labor Day, except in states where another day is provided by law, and call upon all local unions to observe the same. It is advisable for local unions to unite and march under one banner in cities where there is more than one local union and each local union can make such rules and regulations requiring their members to observe the day, as best adapted to their locality.

146 testify that they have always construed the phrase "any controversy over the seniority standing of any employee" as that phrase is used in Section 1 of Article 5 of the contract, to include instances where employees are reduced in seniority standing because of Section 45 of the bylaws of Local 41. They would testify that that understanding was arrived at through negotiation of the contract and that they have in the past followed the practice of regarding such instances as one of such controversies and have allowed the union, Local 41, to determine the seniority standing of members when they became in arrears. And I understand that the general counsel will stipulate that if those witnesses were called they would so testify.

Mr. SCOTT. I am willing to make that stipulation. I would like to ask you, Mr. Manning, you are not contending at any time the union deviated from the provisions of the bylaws in interpreting seniority, are you?

Mr. MANNING. I don't understand what you mean by deviating.

Mr. SCOTT. Well, I meant by this, your bylaws provide that they lose their seniority if they are in arrears. Any member of the union one month in arrears should forfeit all seniority rights?

Mr. MANNING. Well, all accrued rights. They apparently retain them on the seniority list and if that is losing seniority, as you say, well, that's what they do.

Mr. SCOTT. I want to have it clear for the record. You are not contending that any of these witnesses would testify that the union under the same circumstances with Boston, had done any different with other employees, that is what you mean?

Mr. MANNING. No; I think that is true, the union in all instances where an employee gets in arrears in his dues, that
147 is, a member of the union gets in arrears in his dues, the bylaws are placed in operation and the seniority standing of the member is reduced.

Mr. SCOTT. It is forfeited.

Mr. MANNING. Forfeited to this extent that assuming that there were two employees, for illustration, who had failed to pay June dues, one of them was in, say tenth place on the seniority list and the other was in twentieth place. The one who was in tenth place would go to the next to the bottom name on the list and the one who was in twentieth place would go to the bottom of the seniority list, so that in effect it would not be a complete forfeiture of all seniority rights. That is the way it operates, isn't that correct, Mr. Hayes?

Mr. HAYES. That is correct. If I might make one little short statement in there.

Trial Examiner BEAN. You want to say something to clarify the situation?

Mr. HAYES. Say you had a large barn where you had a hundred road drivers working there. The turnover was very large and you had ten men at the bottom of the list that hadn't worked 30 days yet under the time that is specified to get in the union. The man that didn't pay his dues would be placed ahead of those ten. He wouldn't go below those that are classified extra men. He would just go down to the bottom of the regular list. He wouldn't forfeit those other rights that started down below the last men. Over here in this subcase if he went to the bottom of the list, I would have to check the record to see which is correct, it is because they didn't have any turnover and because it was the last man had been there more than 30 days on the list.

Mr. SCOTT. Mr. Hayes, do you ever put anybody on the seniority list who are not members of your Local 41?

Mr. MANNING. Well, now, of course the contract sets up, 148 Mr. Scott, and then automatically go on the seniority list at the end of 30 days whether they are a member of the union or not. The contract doesn't provide that they have to be members of the union to go on the seniority list.

Mr. SCOTT. It is a fact you don't put them on the seniority list unless they are members.

Mr. MANNING. Unless they are members?

Mr. SCOTT. Unless they are members.

Mr. MANNING. No.

Mr. HAYES. That was agreed to in the negotiations of the contract. It is set up there where that works just the same as the by-laws because the man works the 31 days he is automatically put on the list according to the agreement we have reached in the negotiations.

Trial Examiner BEAN. And with the same token if he does not work over 30 days he is not on the list.

Mr. HAYES. Right. He would be classified as an extra man and discharged without further recourse. All he would request is a letter.

Mr. SCOTT. What have you been doing, Mr. Hayes, in regard to enforcing the provisions as to union shop as set forth in Article 2, page 3?

Mr. MANNING. Just a minute. I object to that.

Mr. SCOTT. General Counsel's Exhibit No. 2.

Mr. MANNING. I object to that as entirely irrelevant and immaterial to the issues here. There isn't any charge of any illegal union shop agreement. The contract is specific as to the exemptions of this union from the union shop clause contained in the contract. We have admitted that there has been no U. A. election and there is no evidence of any enforcement of an illegal union

shop agreement. I see no reason why there should be any such evidence.

Trial Examiner BEAN. I think I will exclude it.

149 Mr. SCOTT. That is all.

Mr. MANNING. That is all.

I renew my motion to dismiss the complaint for the reasons stated at the close of the general counsel's case.

Trial Examiner BEAN. Well, I will have to consider this case. It is one that is relatively novel, not entirely novel, and I will take your motion under advisement and act on it and give an intermediate report.

If there are no further questions of the witness he is excused.
Witness excused.

CLIF. LANGSDALE,

JOHN J. MANNING,

922 Scarritt Building, Kansas City 6-E, Mo.,

Attorneys for Respondent.

And thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Eighth Circuit, viz:

(Appearance of Mr. D. P. Findling and Mr. A. Norman Somers as Counsel for Petitioner.)

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 14457

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ETC.

The Clerk will enter our appearance as Counsel for the Petitioner.

A. NORMAN SOMERS,
Associate General Counsel,
D. P. FINDLING,
Assistant General Counsel,
National Labor Relations Board,
Washington 25, D. C.

(Endorsed): Filed in U. S. Court of Appeals, September 28, 1951.

(Appearance of Miss Elizabeth W. Weston as Counsel for Petitioner.)

The Clerk will enter my appearance as Counsel for the Petitioner.

ELIZABETH W. WESTON,
Attorney.

(Endorsed): Filed in U. S. Court of Appeals, March 3, 1952.

(Appearance of Counsel for Respondent.)

The Clerk will enter my appearance as Counsel for the Respondent.

CLIF LANGSDALE,
JOHN J. MANNING,
922 Scarritt Bldg.,
Kansas City, Mo.

(Endorsed:) Filed in U. S. Court of Appeals, September 22, 1951.

ORDER OF SUBMISSION

September Term, 1951. Tuesday, March 4, 1952

This matter having been called for hearing in its regular order, argument was commenced by Mr. John J. Manning for respondent, continued by Miss Elizabeth W. Weston, Attorney, National Labor Relations Board, for petitioner, and concluded by Mr. John J. Manning for respondent.

Thereupon, this matter was submitted to the Court on the petition to enforce order of the National Labor Relations Board, and the Answer thereto, and on the pleadings and proceedings before said Board and the briefs of counsel filed herein, with leave to petitioner to file Supplemental Memorandum in seven days.

OPINION

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 14,457

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, OVER-THE-ROAD AND CITY TRANSFER DRIVERS, HELPERS, DOCKMEN AND WAREHOUSEMEN, LOCAL UNION No. 41, A.F.L., RESPONDENT

Petition to Enforce Order of National Labor Relations Board

(April 29, 1952)

Elizabeth W. Weston, Attorney, National Labor Relations Board (George J. Bott, General Counsel, David P. Findling, Associate General Counsel, A. Norman Somers, Assistant General Counsel, and John E. Jay, Attorney, National Labor Relations Board, were with her on the brief) for Petitioner.

John J. Manning (Clif. Langsdale was with him on the brief) for Respondent.

Before GARDNER, *Chief Judge*, and WOODROUGH and THOMAS, *Circuit Judges*

THOMAS, *Circuit Judge*:

On September 20, 1951, the National Labor Relations Board filed its petition in this court pursuant to § 10(e) of the National Labor Relations Act as amended by the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U.S.C., Supp. IV, §§ 151 et seq., for enforcement of its order of June 26, 1951, against the above named respond-

ent. This court has jurisdiction of the proceeding, the unfair labor practices alleged having occurred at the place of business of Byers Transportation Company, Inc., located in Kansas City, Missouri, within this circuit.

The proceeding was commenced by a charge filed with the Board by one Frank Boston, an employee of the Transportation Company. He alleged that the respondent was engaging in an unfair labor practice affecting commerce within the meaning of the Act, in that, about July 1, 1950, the respondent caused the Employer Company to terminate his seniority, causing him to lose wages for reasons other than his failure to tender the periodic dues and fees uniformly required as a condition of acquiring or retaining membership in Local Union No. 41, A.F.L. Based upon the charge a complaint was filed against the respondent, a hearing was had before a Trial Examiner, whose intermediate report was largely adopted by the Board with one member dissenting.

The Board found that the employer, Byers Transportation Company, is engaged as a common carrier in motor transportation, whose operations are subject to regulation by the Interstate Commerce Commission; that Frank Boston is one of its employees; that the employer and the respondent had entered into an agreement in force at all times pertinent to the issues; and that no union-shop agreement existed between them.

The evidence showed that the contract contained a clause making union membership a condition of employment, but that the union did not obtain the statutory authorization necessary to validate it so that the clause never became operative.

Boston failed to pay his June, 1950, union dues until July 5, 1950. Because of his failure to pay said dues for June on or before July 2d, as provided by a bylaw of respondent, he lost his seniority rights; and since such dues were not paid until July 5th, the respondent, on July 15, 1950, requested the employer to reduce his seniority from the 18th place on the list to the 54th, or bottom of the list. This was done, and as a consequence Boston lost assignments for two trips for which he otherwise would potentially have received pay of \$28.05 on each trip.

Upon these facts the Board found that respondent caused the employer to discriminate against Boston within the meaning of § 8 (a) (3) of the Act, thereby itself violating § 8(b) (2), and that respondent also restrained and coerced Boston in the exercise of his statutory rights in violation of § 8(b) (1) (A) of the Act.¹

¹ So far as pertinent the Act provides:

“§ 8(a) It shall be an unfair labor practice for an employer—
“(3) by discrimination in regard to hire or tenure of employ-

And the Board ordered the respondent:

1. To cease and desist from

(a) Causing or attempting to cause the Transportation Company to reduce the seniority of, or otherwise discriminate against, any of its employees because they are delinquent in the payment of their dues to the union except in accordance with § 8(a) (3) of the Act;

(b) In any manner to cause the employer to discriminate against any of its employees in violation of § 8(a) (3) of the Act; or

(c) Restraining employees of the company in the exercise of the rights guaranteed them in § 7 of the Act.

2. Affirmatively

(a) Notify Boston and the company that it withdraws its request that Boston's seniority be reduced and that it requests that the company offer him immediate reinstatement;

(b) Make Boston whole for any losses of pay suffered because of the discrimination against him; and

(c) Post notice that it will do none of the things which it is ordered not to do.

ment or any term or condition of employment to encourage or discourage membership in any labor organization: . . ."

"§ 8(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 of this title: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; . . .

"(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership: . . ."

• • •

"§ 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3) of this title."

The respondent contends that there is no basis in the evidence for the findings of the Board; whereas the Board insists that its findings and order are supported by the facts.

The agreement between the Transportation Company and the union established a seniority system under which the employees bid for truck driving assignments according to their relative places on the seniority list, and they were subject to layoff inversely to their standing. New employees after a 30-day trial were placed at the bottom of the list. The agreement provided, also, that the seniority could be broken or lost only by discharge, voluntary quitting, or more than a two-year layoff. The company submitted a list of its employees to the union with the anniversary dates of their employment, and the agreement further provided:

" . . . A list of employees arranged in the order of their seniority shall be posted in a conspicuous place at their place of employment. Any controversy over the seniority standing of any employees on this list shall be referred to the Union for settlement."

One of the bylaws of the union provides: "Sec. 45. Any member, under contract, one month in arrears for dues shall forfeit all seniority rights . . . (a) . . . On the second day of the second month a member becomes in arrears with his dues."

Thus the union was able under its agreement with the Transportation Company to call on the company as employer of its members to punish members delinquent in the payment of their dues in violation of said bylaws; and, as the Board found, thus, to discriminate against an employee "in regard to hire or tenure of employment or a condition of employment . . ."

On this point the Board said: "We agree with the Trial Examiner that the employer, by reducing Boston's seniority for being delinquent in the payment of his union dues, discriminated against Boston and that such discrimination would constitute a violation of Section 8(a) (3) of the Act, where, as in this case, the Respondent had not obtained a union-shop contract or a certification pursuant to Section 9(e) of the Act . . . For, in so doing an employer would be strengthening the position of such union contrary to the well-established principle that an employer's acceptance of the determination of a labor organization as to who shall be permitted to work for it is violative of Section 8(a) (3) where no lawful contractual obligation for such action exists."

The evidence here abundantly supports the finding of the Board that the respondent caused or attempted to cause the employer to discriminate against Boston in regard to "tenure . . . or condition of employment." This was a violation of § 8(b) (2) of the Act.

The question confronting us, therefore, is whether there is substantial evidence to support the finding that such discrimination

would or did "encourage or discourage membership in any labor organization" in violation of § 8(a)(3) of the Act. Discrimination alone is not sufficient.

The respondent argues that there is no basis for the Board's finding, in that there is no evidence in the record to sustain the finding, citing *Labor Board v. Reliable Newspaper Delivery, Inc.*, 3 Cir., 187 F. 2d 547.

In addition to the facts stated above Boston testified that he had been employed as a truck driver for a little more than four years and that during all of that time he had been a member of Local 41 and is still a member thereof; that he failed to pay his dues for the month of June, 1950, until July 5th following, and that he thereby violated a union bylaw. On cross-examination he testified that he had requested the Regional Director to permit him to withdraw the charge he had filed and that he was denied that privilege. He was a member of the union at the time the bylaw, Section 45 supra, under which he lost his seniority, was passed; and he filed the charges against the union to get rid of that rule.

The rule to be applied by this court in determining the validity of the Board's finding is set out in § 10(e) of the National Labor Relations Act as amended in 1947 by the Labor Management Relations Act, known as the Taft-Hartley Act (61 Stat. 148, 29 U.S.C., Supp. III, § 160(e)). This section reads: "The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive." See *Universal Camera Corp. v. Labor Board*, 340 U.S. 474; *Labor Board v. Pittsburgh Steamship Co.*, 340 U.S. 498.

Having considered the record as a whole we can find no substantial evidence to support the conclusion that the discrimination in regard to the tenure or condition of employment of Boston did or would encourage or discourage membership in any labor organization. The testimony of Boston refutes such a conclusion. Theoretically such an act might have such an effect. But in this case we find no substantial evidence that it did or would have such effect. "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. Labor Board*, 305 U.S. 197, 229. Quoted in *Universal Camera Corp. v. Labor Board*, 340 U.S. 474, 477. It "must do more than create a suspicion of the existence of a fact to be established." *Labor Board v. Columbian Enameling & Stamping Co.*, 305 U.S. 292, 300.

The meaning of the statute in its application to different circumstances may be debatable. Clearly § 8(a)(3) may be read thus: It shall be an unfair labor practice for an employer to encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment.

In this instance the discrimination occurred when the employer, caused by the act of the Union in violation of § 8(b)(2), reduced Boston's seniority from the 16th to the 54th place on the list of employees.

The testimony of Boston, however, shows clearly that this act neither encouraged nor discouraged his adhesion to membership in the respondent union. The question then is, Would the act of the union encourage or discourage other employees who might learn what had been done? Unless the statute may be interpreted to apply to such other employees there is no evidence substantial or otherwise to sustain the order of the Board. If, on the other hand, it must be so construed, then the order is supported only by "suspicion" and speculation. There is no evidence in the record either substantial or in the nature of a scintilla to support it.

The petition of the Board for a decree enforcing its order must, therefore, be and it is denied.

DECREE

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 14457

September Term, 1951. Tuesday, April 29, 1952

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, OVER-THE-ROAD AND CITY TRANSFER DRIVERS, HELPERS, DOCKMEN AND WAREHOUSEMEN, LOCAL UNION No. 41, A. F. L., RESPONDENT

Petition to Enforce Order of National Labor Relations Board

This cause came on to be heard on the petition of the National Labor Relations Board for a decree enforcing order entered by said Board on June 26, 1951, against respondent, the answer of the respondent to the petition for enforcement and the pleadings and proceedings before said Board, and was argued by counsel.

On consideration Whereof, It is now here Ordered, Adjudged and Decreed by this Court that the petition of the National Labor Relations Board in this cause for a decree enforcing order entered by said Board on June 26, 1951, be, and the same is hereby, denied.

April 29, 1952.

IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 14,457

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, OVER-THE-ROAD AND CITY TRANSFER DRIVERS, HELPERS, DOCKMEN AND WAREHOUSEMEN, LOCAL UNION NO. 41, A. F. L., RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

PETITION OF THE NATIONAL LABOR RELATIONS BOARD FOR REHEARING

The National Labor Relations Board respectfully petitions this Court for a rehearing of the Court's decision entered on April 29, 1952 insofar as it fails to pass upon the Board's conclusion that the conduct of respondent Union, apart from any question of its legality under Section 8 (b) (2) of the Act, constituted an independent violation of Section 8 (b) (1) (A). The Board respectfully submits that the Court inadvertently overlooked this separate and distinct unfair labor practice finding, which alone justifies all the provisions of the Board's order except paragraph 1 (b) thereof.

In its opinion the Court found, in agreement with the Board, that respondent Union "was able under its agreement with the Transportation Company to call on the company as employer of its members to punish members delinquent in the payment of their dues * * " (slip opinion p. 5), although the union-shop clause in the respondent's contract with the employer was never validated and "never became operative" (sl. op., p. 3); that "the evidence here abundantly supports the finding * * * that the respondent caused the employer to discriminate against Boston" (sl. op., p. 6); and that such "discrimination occurred when the employer, caused by the act of the union in violation of Section 8 (b) (2), reduced Boston's seniority [as a penalty for delinquency in the payment of Union dues]" (sl. op., p. 8).

Upon these facts, the Board concluded that respondent Union had violated Section 8 (b) (1) (A) of the Act, inasmuch as the job discrimination which the Union practiced against Boston constituted restraint or coercion of employees (by a form of economic reprisal not privileged under the *proviso* to Section 8 (b) (1) (A)), in the exercise of a right (e.g., to "refrain" from assisting the Union by paying dues or otherwise) which is guaranteed in Section 7 of the Act (R. 20, 32, 33-34, 36). The Court did not discuss these

legal conclusions in its opinion; it only rejected the Board's additional conclusion that the discrimination in question tended to "encourage" Union "membership" within the meaning of Section 8 (a) (3) of the Act, so as to make the Union's conduct illegal under Section 8 (b) (2) (sl. op., pp. 7, 8).¹ In denying enforcement of the Board's order for this one reason, we respectfully submit, the Court erred, apparently overlooking the independent character of the two unfair labor practices found by the Board to have been committed by the respondent in this case. In this connection, the Board desires to point out that the element of encouragement of union "membership," which the Court found lacking here, is *not an essential element of the unfair labor practice defined in Section 8 (b) (1) (A) of the Act*. That Section, without reference to any employer violation of Section 8 (a) (3), broadly proscribes union restraint or coercion of employees in the exercise of the right to engage in, or abstain from, union and concerted activity which is guaranteed in Section 7.

For the reasons discussed at pages 27-31 of the Board's main brief,² the Board's conclusion that respondent Union's conduct in this case violated Section 8 (b) (1) (A)—whether or not it also violated Section 8 (b) (2)—is fully warranted by the fact findings, summarized above, which the Court has adopted in its opinion. Both the essential elements of an 8 (b) (1) (A) violation are present: (1) Under Section 7 of the Act, Boston had a right not to pay his Union dues, just as any employee is entitled to "refrain" from any and all forms of union activity and assistance to labor organizations. And (2) it is settled law that to "discrimi-

¹ The Board respectfully notes its disagreement with the Court's holding that the record does not contain sufficient evidence to sustain the Board's inference that the job discrimination involved in this case "did or would encourage * * * membership" in the Union (sl. op., pp. 7-8). The Court's determination, in agreement with the Board, that the Union was able to, and did, "call on the company as employer of its members to punish members delinquent in the payment of their dues" (sl. op., p. 5), we submit, is sufficient to establish that Boston and the other Union members were encouraged to *pay their dues* promptly, and thereby encouraged to maintain "membership" in the Union, in violation of Section 8(a) (3) and (b) (2). However, we do not ask for rehearing on this point inasmuch as we have nothing to add to what we said on it in our brief and argument.

² See also, the supplemental memorandum on the legislative history of the *proviso* to Section 8 (b) (1) (A) which was filed by the Board, pursuant to leave granted by the Court during the oral argument, in March 1952.

nate against an employee" (sl. op., p. 5), as here, in regard to a term or condition of his employment,³ is to "restrain or coerce" employees within the meaning of both Section 8 (a) (1) and Section 8 (b) (1) of the Act (see cases cited at p. 27, note 24 of the Board's brief).

Furthermore, the Board's order in this case (R. 21-23), save only for paragraph 1 (b) (R. 21), is adequately supported by the separate and independent finding that respondent Union committed an unfair labor practice under Section 8 (b) (1) (A). See *Gullett Gin Co. v. N.L.R.B.*, 179 F. 2d 499 (C.A. 5) reversed on other grounds, 340 U.S. 361, where the court, although refusing to find that an employer's discrimination against employees violated Section 8 (a) (3) of the Act, sustained the Board's finding that the employer had violated Section 8 (a) (1) and enforced those provisions of the Board's order which required the employer to reinstate the employees discriminated against and reimburse them for their loss of pay. See also *N.L.R.B. v. Smith Victory Corp.*, 190 F. 2d 56 (C.A. 2), enforcing 90 NLRB 2089; *N.L.R.B. v. Vail Mfg. Co.*, 158 F. 2d 663, 667 (C.A. 7); cf. *Eclipse Lumber Co.*, 95 NLRB No. 59 (28 LRRM 1329, 1333).

For these reasons, it is submitted that this petition for rehearing be granted, and that upon such rehearing the Court enter a decree enforcing the Board's order in all respects except paragraph 1 (b).

Respectfully submitted,

GEORGE J. BOTT,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
A. NORMAN SOMERS,
Assistant General Counsel,
ELIZABETH W. WESTON,
JOHN E. JAY,
Attorneys,
National Labor Relations Board.

MAY 1952.

³ As explained at pp. 29-31 of the Board's brief, the *proviso* to Section 8 (b) (1) (A), upon which the Union relied as a defense, permits a labor organization to "prescribe" discriminatory rules "with respect to the acquisition or retention of membership therein." The proviso does not apply to the Union's conduct in this case, however, for that conduct involved discrimination with regard to conditions of *employment*, not "with respect to the acquisition or retention of membership" in the Union.

Certificate of Counsel

Comes now A. Norman Somers, Assistant General Counsel of the National Labor Relations Board, and certifies that he has read and knows the contents of the foregoing petition and that said petition is filed in good faith and is believed to be meritorious.

A. NORMAN SOMERS,
National Labor Relations Board.

WASHINGTON, D. C., MAY , 1952.

(Endorsed): Filed in U. S. Court of Appeals, May 12, 1952.

ORDER DENYING PETITION OF PETITIONER FOR REHEARING

September Term, 1951. Monday, June 2, 1952

Petition for Rehearing filed by Petitioner in this cause having been considered by this Court, It is now here Ordered that the same be, and it is hereby, denied.

JUNE 2, 1952.

CLERK'S CERTIFICATE

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

I, E. E. Koch, Clerk of the United States Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains printed record, consisting of pleadings before the National Labor Relations Board, petition of the National Labor Relations Board for enforcement of its Order, and answer of respondent to petition for enforcement, and portions of record printed as an appendix to brief of respondent, on which the case of National Labor Relations Board, Petitioner, vs. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Over-the-Road and City Transfer Drivers, Helpers, Dockmen and Warehousemen, Local Union No. 41, A.F.L., Respondent, No. 14457, was heard in said Court of Appeals, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in said cause in said Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States.

I do further certify that on the 13th day of June, A. D. 1952, a certified copy of the Decree of said Court of Appeals entered on

April 29, 1952, was transmitted to the National Labor Relations Board.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri on the 12th day of August, A. D. 1952.

E. E. KOCH,
*Clerk of the United States Court of Appeals
for the Eighth Circuit.*

[SEAL.]

162

Supreme Court of the United States

No. 301, October Term, 1952

[Title omitted.]

Order allowing certiorari

Filed October 20, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted. The case is assigned for argument immediately following No. 230, **Radio Officer's Union, etc. vs. National Labor Relations Board.**

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.